## 

## Regale Necessarium:

The Legality, Reason and Necessity

Rights and Priviledges
Juftly Claimed by the

# Kings Servants,

And which ought to be allowed unto them.

## By Fabian Philipps.

Seneca in Traged. Octavia, A& 2. Colletta vitia per tot Etates din In nos redundant, Seculo premimur gravi,

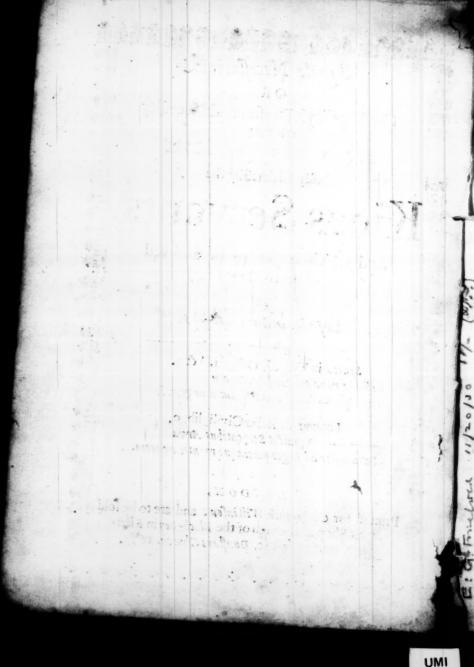
Lucanus de Bello Civili, lib. 9.

Squalent Serpentibus Arva

Durum iter ad Leges patriaque ruentis amorem.

#### LONDON,

Printed for Christopher Wilkinson, and are to be sold at his Shop at the Sign of the Black-Boy in Fleetstreet, over against St. Dunstans Church. 1671.





To the Illustrious and Right Honourable
James, Duke, Marquess, and Earl of
Ormond, one of the Lords of his Majesties most Honourable Privy Councel,
Lord Steward of his Majesties most Honourable Housbold, and Knight of the
most Noble Order of the Garter.

And unto the Right Honourable Edward

Earl of Manchester, one of the

Lords of his Majesties most Honourable

Privy Councel, Lord Chamberlain

of his Majesties most Honourable Houst
hold, and Knight of the most Noble Order

of the Garter.

My Lords,



Ere it not that these unhappy times have brought forth a sort of reasonless men, whose humors and Phancies led by an ignorance or Interest makes

a 2 them

them unwilling to submit to Laws, and the necessary and just means and Rules of Government unless their understanding which in those quarrelling and contentious Sceptickes is little enough, may be convinced and fatisfied with the Reason thereof; these my Labours might have seemed to be as needless as Physick for those which are in Health, and to belittle more than a quarrel with my own Shadow: But they that hear the dayly complaints now more than ever made against the Legal and just Priviledges of the Kings Servants, the aftronts offered to the Majesty and Supreme Authority of the King by Arrefting and Imprisoning them without leave first obteyned of the Lord Chamberlain of his most Honourable Houshold, or those other great Officers therein to whom it apper, tayneth, and by bringing of Writs of Habeas Corpus by those which have been taken and Arrested by the Kings Meslengers for their contempts therein, to be delivered by the subordinate Courts modern

of Justice against the mind and Authority of the King that Commissionated them and those many disparaging contests which do arise thereupon, with the unwarrantable Opinions now put to Nurse, that the King cannot in such a case protect his Servants, without a great delay or hindrance of the Execution of Justice, that they being Outlawed may be Arrested, whether he will or no; And that he hath so conveyed his Justice to his Courts of Justice, as he is not in the case of his Servants to intermeddle therein: may I hope Apologize for my undertaking and endeavors to perswade them out of those and some other their great mistakings and Errors, which may produce a neglect and flighting of Authority, and many an unforeseen evil confequence: In the marile

In the management whereof, I can call my most reserved and private thoughts to witness, and they will therein (I am consident) acquit me that I have not built an Altar to flattery, or made any design or hopes of preser-

ment.

ment to be my guide or incitement thereunto, but have done what I now present unto you, only to maintain the Honour and respect which is due to our Soveraign Lord the King and his Servants, casta mente & manu accompanied with a principle and opinion that he deserves to be accompted the greatest of villaines, that would make it his design to lessen or detract from any of the Kings Rights, Prerogative and just means of Government, and to be ever infamous, that for any ends what soever, would endeaver to diminish or take away any of the peoples Legal Rights, Liberties and Priviledges; And in that middle way and path of Truth and doing Right to all Parties, have no intention to give any affiftance for the defrauding, or too much delaying of Creditors just debts, or stopping the course of Justice in any the peoples Actions or Profecutions of their rights, or for remedies against Wrongs or Injuries done unto them by any indirect course or shelter for such as shall only pretend themselves to be the Kings

Kings Servants, when they are not truly

or really thereunto entituled.

In which my Labours, if any shall undervalue the Authorities which I have brought from the Laws of Nations, Customs or usage of all or the most of our Kings and Princes, and the Civil Law that great repository of Reason and Prudence to fortifie my affertion of the Priviledges of the Kings Servants; they may please to understand that they are principally derived from the Laws of Nations, Civil Law and univerfal right Reason, consonant and agreeable to our common Laws, which have inftru-Red and guided themselves by many a: maxime and piece of right Reason which they have received from them.

Or shall say that the Records of this Kingdom which have been cited in Conformity thereunto, are only sit to make a history, but do serve for no proof, as some of those of the long robe have with much Injury unto them and themselves, and the Truth not long ago been pleased to say, or that the old things are passed away:

thole :

those Antiquities are obsolete and little to be regarded; Wee are now upon a new way, the Law hath been much altered and changed, and those evidences and venerable Monuments of Time, being the vestigia and footsteps of antient Laws and Customs are not to be much respected.

And will adventure to vent such Do-

Gutherius de Offic. dolib. 1, ca. 1,

Etrines or Opinions, and make themselves, as Gutherius a learned French Advocate complaineth, (a) guilty of the mas August. neglects of those very necessary and usefull parts of Learning and Knowledge, which are to be found in the Treasuries of Time and Antiquities, may upon better confideration, find cause to believe that the Reason of Laws doth never Expire, that the unerring Wisdom of the Almighty that Writ fome Laws with his own Finger, and commanded his beloved people of Ifrael to repeat them (b) to their Children and after Ge.

b Deut 4.32. nerations, to ask of the days that were past, and which were before them fince the day that God Created man upon the

Earth.

#### The Buffle Dadicarony

Barth, and that Bilded the Shubite one , Job 8. v. of fobs friends to ( ) gave him no ill 8, & 9. Gountel when he advited him to enquite of the former Age, and prepare binfalf conthe fearch of his futher a had enforceth, in by a Reason, that we are but of yesterday, and know, norbing, because out days rapan porth ane a Shadow ; (d) d Jer. 6. v. and the given of all Wildemidid long 16. after by his holy Spirit fin the Propher feremy on enjoyn them to fland in the mays and fee and askifon the old Paths, that in the making of new baws land the amending or correcting of the old of be knowledge of those which have been alegred, repealed or laid afide, is not a limle necessary, to the end, that by the old, we may fee the necessity and perfection of the new, and by the old, how to avoid the failings which might happeninnthe Interpretation or Execution of the new, that the Grecians had their Momophilaces ad quos rerum geftarum consignatio pertinebat, (e) intextarent Monus e Craigius de menta Publica, ad que recurrere liveret ripub. Lace-demon. lib. quum alique in re majorum excellephon 2, ca. 2. manone

requi-

## The Epifik Dedicatory.

fLivius lib.o.

was dor requirerent pland that the Roman le greatly valued their old Records as they gave great Preferments and Honours to Flavius a Scribe or Notary: (f) And the 349, 6 350. Priviledge of aCarale Chaire, for publishing and bringing fome of them to light, thar all other Civilized Nations, and even thole of China and Japan have highly effected their Records and Memorials. that in our Parllaments Courts of Justice and Chancery, Records and precedents in my Matters or Cales of Difficulty vare ne feldome enquired after and directed od be fearched, that the Dates, Clauses or Words of fome Ads of Parliament and the Reports of Cafes adjudged have been found to have been miffaken, and reflified after by the Records; That it is Felding so imbesill or corrupt a Record, that Courts of Records are more Honoured and effeemed chiantithofe which are not and that the Law will nee permit a Record to be averred against, rmuch gainfaid ( ) , tad it as a compo

And that fuching care was taken of our Records by our Ancestors, as the

Commons

The Epifile Distantary I

Came in their Petrion in Pasidment, in the 46th year of the Heiga of King Edward the 13d (g) stile them the peoples grain Parl. Evidence, and pray to have upon their 46 E. 3. occasions a free and uninterrupted access unto them. Our Kings bave in feweral of their Reigns, made allowances of Money, and Expenses for the Calendaring and well ordering of them, and caused them to be kept and proserved in places of strength and safety whereby to fecure them from the fury of Wars on Fire, or other destroying Calual-

That if the Reports of cases adjudged upon Demurrers or special Verdicks, and the responsa production, and carefull and well Studied Arguments of the Judges, such as the Learned, Mr. Plandens Commentaries, and the Reports of Dier, Anderson, Cohe, Craoke, Hobare, and other the Labours and Memorials of the venerable and learned sages of our Laws (the Errors too often attending the Works and Labours of

all all

## The South Dedictory

attralied in the transport of land and the fervorthile Just rosteonil and value, and arei'a light and iguide to the Reason and ad the Judgement of Posterity and often Ages a deand the more diben shey have the affi-Stands of the Records to back and Ware rant them and that even Histories are the bester when they keep in the fight and Company of Recentles and onto dring and well predering sonthlink worth a And it intheir Trush and Evidence they conduce much to that verity and containty which bught to be in Hiltories; out Records certainly deannot by lamo Reason or Rules of Prudence be believe verboriunderstood to be usels normineceffaire totabe Study on affecting of the Tritehen and Rationality afrons Haivas and the Rules and Method thereof bas . Mor brenchole Jewels of Time to be ranked with Romances, com fuch Triviall things as may claim no more thing Gue; fory land careles reading inwhenliff carefully be as letheyev oughto toniber entited candokents of they allo give as the Certainte lands Thurb! of matremonf Ils fact:

## The Epifel Designary,

no estantial de la constant de la co

And may well deferves better Oredis than any Reports of cales adjudged or re-Thonfa prudentum, fome of which are but Opinions and Answers not seldom fuddainfy and unpremeditately given to the many times ill or untruly put State of the cafe of question by the Advocates and Lawyers at the Barr, or than any of the most severe and impurcial distonies, which Athough they have been by the Wilel & Major part of all Nations for many Ages paft, believed to be great and excellent Lummaties in their feveral Spheres, and hould be Tenewaltaris, yeu if the Ren cords of every Nation who have the happinels to have them, being Tabula Monumenta Publica the faithfull Reoffers of part Actions are allowed to be good to make Hiftories, whichare greafer Strangers unto them than they should be and are too often written without any acquaintance with them ) that farely which crediteth and maketh them the better:

## The Epiple Profestory

better to believed is not left but more to be valued, for a fad experience bath told us, that the destroying of the Booksof the old Philosophers by Asiftette, and the former Books of the Civil Law, by Juftinian when he compiled his Code and Inftitutes, and of our English Books and Mamuscripts, when Polithere Virgil and his Hiflory would not willingly fuffer any other to be his Competitors did much obfoure and hinder the Knowledge and light, which is now more dark and hidden than otherwise it would have been; And we may believe, that if Records, and faithfull, aud Antient Memorials had ever deferved, as they never did, to be flighted, they might now be spared and admitted into their former reputation, and not be made to truckle under Reports of Cases adjudged, when our last twenty years Confusion, have by the Knavery and Imposture of too many of the Stationers, furnished out abundance of certain fragments of Laws, and untrue and miftaken Reports, and too many Histories of the World have suffered in the want of

the amount inecessary Aid of A Records, when lo great a part of the Knowledge of the first Ages of the World was washed away by the Deluge, and the learning and Experience of mat. ny Ages after, loft by the want of Letters, which the Wars, and the rude and unruly Behaviour of those tadly Generations would not admit band that to despite Records and Antiquities ; is to proclaim us , las Tully the most excellent Roman Orator long ago faid, to be willing to be Children as of yellerday, and to have no retrofped into the Wildom of the Actientry and experiences of path Ages, seaching us wherein fome have falocorded and others miscarryed; is to put our felves into as flort a Memory as that of the Thracians fome of whom were Reported not to beable to number or reckoriany further than four years, or to make light incertain or loofe traditions, the most we can reach or actain uneo, and refuse the me Alla dies, which were wont to be the faithfull guides and Conductors of

our Actions to come, and may render those who despise the old, and only delight in new things, to be in no better a Condition than fome of the worthy and learned Affembly of the Royal Society of Grefbam Colledge, who by not heedfully confidering old things have unhappily been drawn into the field; and enforced to encounter with Mr. Henry Stubs his Animadverfions, wherein he undertakes to prove that fome things which they thought to be new, have been of a much more Early dateon bist ons -"So as whether Reports of Cafes adjudged in Law, be old or new, well or ill taken, both they and Histories are to acknowledge the Records to be their Superiours, and that they are in all things the better for their acquaintance. a offit

And those great Obligations must neither be denied or forgotten, which our Laws do owe unto the Records of of this Kingdom, and our great Seldens Intimacy and familiarity with them, by whose learned what bours and Observations, we have liad the benefit of the dif-

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covery

#### The Epifile Dedit avery.

discovery and dispelling of many an Error, and of the Illustration of many difficult and dark Notions and places in our Laws, by which his great infights and inquiries into the English Records and Antiquities, and the Scuerest part of the Learning of our Common Laws and the Civil Law , and Laws of many Nations, he became rehabled, and was as a learned Forreigner bath justly stiled him a Dictatof or mighty man of Learning, to giving aid and affiftance tauquam deThrona Sapientile to the republick and Posterity of good Letters and Learning, his Knowledge therein being do fingularly exquifite, Surmounting and Supereminent, as he was not sinfitly faid to be decre to cloric gentis Anglorum, and if Nature could have to long have kept him from the fare of Mortality, ought to flave fulviv ved many Centuries more and have none tinued his admired Course in Learning. until the period and end of the World. for that as Bir John Vanglam Bright, now Lord Obief Juffige of the Court of Com+

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Common Pleas, his contemporary and most intimate affociate in those more fevere Recherces and choice pieces of Learning and Antiquities hath fince his death, bemoaning the loss and want of fuch a Treasury of Learning, not long fince well expressed it. Debuit cum mundo mori it was too great a loss to the World and after Generations, that he should dye before it, for although the neglect of Records and Antiquities which might have a greater veneration than this Age is willing to bestow upon it, have of late been formuch undervalued as to be termed rufty and motheaten, and those which do give them their true esteem and value, superstitious Porers and Doters upon them; So as the laborious Learned and well deserving Antiquarie Mr. William Dugdale was not without Premisses to Warrant his Conclufion, when withfome regret mixt with facetiousness he faid that for any man in these Times, to busie himself in the old Records, orto foend his Time & Candle in the fearch & fifting of Antiquity, it would

by the little incouragements which have been given unto it, amount unto as small a Profit or Purpole, as to fet up and keep a shop to fell old fashon'd Hofe, Trunk-Breeches, and long wasted Dublets, and expect to gain by it. To fo great a mispris and scorn are those intefull inquiries and Lamps of Learning fallen into. when as they do draw out of the pit and devouring Jawes of Time, many a pretious and hidden Truth, and are not feldome the only rescuers of it, and was Better respected when old Marculfus Wrote his Formulæ's Pancirollus his deperdita, and when Briffonius and Pafquier, Camden, Selden, Lindenbrogins, our Learned Sir Henry Spelman, and Mr. Dugdale; and many other Worthies not here ennumerated, made it their Bufiness to discover them, and the very Lextned Sir Robert Cotton was at for great an Expence of Money and Time to Redeem to many as he did from the Captivity of an everlasting Oblivion, which hath taken away and concealed many a Truth from the former Generations. C 2

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tions, this present Age which are to come, and to dig in those hidden Mines of incomparable Treasure; But when the fcorners of this Age shall have furfeited with the villifying of the Wifdom of the former, and the Experiences of men and times past, which Solomon, in the high and not to be valued Price. which he did put upon Wisdom, and the Incouragement which he gave to the Study and fearch after the Riches and Treasures thereof, would never have advised them unto : They or some other after them may learn to forfake that grand piece of resolved folly, by what this Nation and the Kingdoms of Ireland and Scotland have so greatly suffered in the late time of Rebellion and Confusion, by fome of our Lawyers and too many of our Nation, not understanding the Rights and Pierogative of the King, which the old Records of the Kingdom did, and will always abundantly witness, and by too many of the Inferior Clergies Ignorance of the Ecclesiastical Histories and Primitive times which did not a little contribute

tribute unto it, and believe that the greatest differvice which can be done to Princes to endeavour to advance their Prerogative beyond the Laws of the Land, right Reason, and the necessary and just means ofGovernment, and that on the other fide they are small Friends or rather great Enemies to the Publick, that will go about to perswade the People or entitle them to more Liberties than the Laws well interpreted will allow them, that there is a Justice to be done to the King in giving unto him that which belongeth unto him, and in not denying his just and Legal Rights, as well as a Justice to be done by him, in what shall concern his people and their Liberties; That there is a Majefty due to Kings, and that the Rights of their Courts, Palaces and Servants, are neither to be neglected or continu-

And therefore if the Romans those great Champions and Patrons of Libertie, were so Jealous and Watchfull in the Preservation of the Honours and respects due unto Magistracy and Superiority

periority, as their Consul Fabius would rather for the time forget the Honour due and payable from a Son to his Father (of which that Nation were great observers ) than relinquish any thing of it, and commanded by a Lictor or Officer his Aged Father Fabius ( the Renowned preserver of Rome ) in a Publick affembly, to alight from his Horse and do him the Honour due unto his prefent Magistracy, which the good old man, although many of the People did at the present dislike, did so much approve as he alighted from his Horse, and embracing his Son , faid , Enge fili fapis qui intelligis, quibus imperes, & quam magnam Magistratum imperes, I may give my felf an Affurance that your Lordships will with greater reason make it your endeavours, not only to preserve the Rights of Majesty, but the Rights and Priviledges of those great and Honourable Offices and places, which you hold under the King our Soveraign, and be as willing as your great and Honourable Prede-

Predecessors in those Offices, were to transmit them to their Successors, in no worse condition than they found them.

Which that it may equally be done in that particular of the Kings Servants just Rights and Priviledges is the only defign of the ensuing vindication of them, and the Honour and respect due unto our Soveraign, and submitted to you Lordships Judgment and Confideration, humbly intreating your Lordships to pardon any the Errors or failings therein, which in the haste of the Press my defire to keep pace with it, when I was crebris intermissionibus & aliorum negotiorum incursionibus frequenter interpellatus might easily happen, and more especially in an undertaking of that Nature nullius ante trita pede, being a Path never before (as I could perceive) trodden by any but

> Your Lordships most Humble Servant

> > Fabian Philipps.

With a mark of the last of Visiting in a distribution of sil in many is the realization with the land principle the Frens or failing therein, which or don't wall in their oil mit was nothis intenditional or about it necessaring ingentionibus requeste intele en bla compad villes of in the less at the minimum of the state of ture nelling and trite pade, being 2 11, h never lefore ( as I could perceive) reodden by any but

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Your Lord hip moli Hejable servant



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## TABLE

OR

Contents of the Chapters.

That there is a greater Honour due unto the Palace and House of the King, Then unto any of the houses of his Subjects. Chap. I. 4.

That the Business and Affairs of the King, about which any of his Servants or Subjects are imployed, are more considerable and to be regarded, then the Business and Affairs of any of the People. Chap. II.

That the Kings Servants in ordinary, are not to be denied a more than ordinary Priviledge or respect, nor are to be compelled to appear by Arrest or otherwise in any Courts of Justice out of the Kings House without leave or Licence of the Lord Chamberlain, or other the Officers of the Kings Houshold to whom it appearainsth, first had and obsequed, Chap. III, 38.

That

That the Priviledges and Protections of the Kings Servants in ordinary, by reason of his Service, is and ought to be extended unto the Priviledged Parties Estate both real and Personal, as well as unto their Persons. Chap. IV. 244.

That the Kings Servants whilf they are in his Service, anght not to be Utlamed on Profecuted in Order thereunts, without leave or Licence first observed of the King, or the great Officers of his most Honourable Houshold, under whose several Jurisdictions they do Officiate. Chap. V. 250.

That the Kings established and delegated Courts of Fustice, to Administer Fustice to his People, are not to be any Bar or hindrance to his Servants in ordinary, in their aforesaid Antient, Fust, and Legal Rights and Priviledges. Chap. VI. 289.

That the King or the great Officers of his Houshold, may punish those who do instringe his Servants Priviledges, and that any of the Kings Servants in ordinary, being Arrested without leave, are not so in the Custody of the Law, as they ought not to be released untill they do appear or give Baylto appear and Answer the Action, Chap. VII, 310.

That the aforesaid Priviledge of the Kings Servants in ordinary, hath been legally imparted to such as were not the Kings Servants in ordinary, but were imployed upon some Temporary and Casual Affairs abroad, and out of the Kings House. Chap. VIII. 318.

That the Kings granting Protections under the Great Seal of England to such as are his Servants in ordinary, for their Persons, Lands and Estates, when especially imployed by him into the parts beyond the Seas, or in England, or any other of his Dominions, out of his Palace or Virge thereof, or unto such as are not his Domesticks or Servants in ordinary or extraordinary, when they are sent or imployed upon some of his Negotiations, Business or Assairs, neither is, or can be any Evidence or good Argument, that such only, and not the Kings Servants in ordinary, who have no Protections under the Great Seal of England, are to be Protected or Priviledged whilst they are busied in his Palace, or about his Person. Chap. 1X. 343.

That our Kings (some of which had more than his now Majesty hath) have or had no greater number of Servants in Ordinary, than is or hath been necessary for their Occasions, Safety, well being, State, Honour, Magnificence and Majesty; And that their Servants waiting in their Turns or Courses, are not without leave or Licence as aforesaid, to be Arrested in the Intervals of their waiting or Attendance. Cap. X. 353.

That the King being not to be limited to a number of his Servants in Ordinary, is not in logreat a variety of Affairs and contingencies, wherein the publick may be concerned, to be restrained to any certain number of such as he shall admit to be his Servants extraordinary. Chap. XI. 365.

That

That the Subjects of England had heretafore such a regard of the King and his Servants, as not to bring or commence their additions where the Law allowed them, against such of his Servants, which had grieved or Injured them, with ut a remodic sirst Petitioned for in Parliament. Chap. XII. 375.

That the Clargy of England in the height of their Priviledges, Encouragement and Protection by the Papall overgrown Authority, did in many cases, lay aside their Thundert olis and Pomer of Excommunications, appeals to the Pope, and obtaining his Interditions of Kingdoms, Churches and Parishes, and take the milder, modest, and more reverential may of Retitioning our Kings in Parliaments, rather than turn the rigors of their Canan, or Ecclosiaftical Laws, or of the Laws of England, against any of the Kings officers or Servants. Chap. XIII, 389.

That the Judges in former times did in their Course and Proceedings of how and Justice, manifest their unwillinguists to give on permit any obstruction to the Service of the King and West Publick. Chap. XIV. 392.

That the Dukes. Murqueffes. Count Palatines, Finds. Kafeounts and Barons of Boglands, and the Rifloops, as Barons bowe and doenjoytheir Priviledges, and freedom from Arrefts or Imprisonment of their Bodies in Givil and Personal Actions; As Sanuams extraordinary and attendants upon the Berson, State and Majesty of the King, in Order to his Gove, nment, Weal

west Publick, and safety of him and his People; And not only as Peers abstracted from other of the Kings Ministers or Servanes in Ordinary, Chap. XV. 413.

That many the like Priviledges and Preheminences, are and have been antiently by the Civil and Cæfarean Laws, and the Municipal Laws and Customs of many other Nations, granted and allowed to the Nobility thereof. Chap. XVI, 445.

That the Immunities and Priviledges granted and permitted by our Kings of England unto many of their People and Subjects, who more not their Servants in Ordinary, do amount unto as much, and in some, much than what our Kings Servants in Ordinary did or do now defire to enjoy. Chap. XVII. 466.

That many of the Reople of England, by the Grace and Foreign of our Rings and Princes, or along permission, usuge on prostription, de enjoy and muke after of very many Industries, Ememperous and River ledges, which have not had so great a Cause or Foundation as those which are now claimed by the Kings Servanes, Chap, XVIII. 489.

That those many other Immunities and Priviledges have neither been abolished, or so much as murmured at, by those that have yeilded an Assent and Obedience thereunto, although they have at some times, and upon some Occasions, received some Loss, Damage or Inconveniences thereby. Chap. XIX. 494.

Thas:

That the Power and care of Justice, and the distribution thereof, is and hath been so Essential and Radical to Monarchy and the constitution of this Kingdom, as our Kings of England have as well before as since the Conquest, taken into their Cognisance divers Causes, which their established Courts of Justice either could not remedie, or wanted Power to determine, have removed them from other Courts to their own Tribunals, and propria authoritate caused Offenders for Treason or Felony to be Arrested, and may upon Just and Legal Occasions, respite or delay Justice. Chap. XX. 503.

That a care of the Honour and Reverence due unto the King, hath been accompted, and is, and ought to be the Interest of all the People of England, and that the Servants and retinue of a Soveraign Prince, who hath given and permitted to his Subjects, so many large Liberties, Immunities, Exemptions, Customs and Priviledges, should not want those Exemptions, Immunities, Customs and Priviledges, which are so Justing claimed by them: Chap, XXI, 587. And the state of the state of the

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#### Errors of the Printer.

Page 22. line 2. dele now & interfere after, p. 34. 1.25. dele to, p. 43.1. 4. dele and & interfere by, p. 52.1.22 dele feirce and incult & interfere rude and uncivill, p. 61. 1. 25. interfere always, p. 62. 1. 2. interfere in, p. 88.1.26. dele not, p. 111. 1. 28. dele yet. p. 137. 1. 23. dele not, p. 159. interscribe Baile, p. 166.1.4. dele as, p. 197.1.penult. dele or interscribe as p. 217.1.28. dele the Corfaires, p. 219. 1. 22. dele not, p. 241. 1. 6. dele unto, p. 265. 1. 10. dele during the, and interline in a more fitting place, p. 416. 1. 13. r. Evo, p. 423. l. 17.r. Conquestorem. 349 in margin, r. Cromwell, p. 453 . l. 2. interfere pleg. & 1. 4. r. distring as, L. 14. interfere them, p. 460. in margin, r. Valentinus, & l. 16. r. nobiles, p. 461. in margin, r. Caffanam, l. 10. r. noblemen, p 473 l. 2. r. Commons, p. 527. l. 19, interfere of westminster, p. 552. from thence to page 555. mispaged in p. 543.1. 4. interfere it, p. 596.1. 27. interline of p. 614. 1. 20. dele an Afilum, or & interfere a ; which with fome other literal faults, redundancies, omiffions of particles, and Errors of the Prefs, are defired to be amended and excused.

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The Reasons aswell as Law of the Priviledges and Freedom of the Kings Servants in Ordinary, from Arrests and Troubles, of and in their Persons and Estates, before Leave or Licence obtained of the King their Royal Master and Soveraign.

F the Rights of Soveraignty and Majesty and it's Legal, Rational, and necessary Protection and Preservation of the Pcople, in their feveral Interests and Priviledges; That due care which they ought to take of him and the means wherewith he should do it, the Honour of the King, and the support and maintainance of it, the Reverence and Respect which they should upon all occasions manifest to their Prince and Common Parent, and the influence which all or most of his affairs have or may have in their fuccesses and consequences Good or Evil, upon all or the greatest part of the Affairs of the People, were not enough, as it is, abundantly sufficient to perswade them to an abstaining or abhorrency from the Incivility of late practiced to Arrest or Trouble the Persons or Estates of the Kings Servants in Ordinary

Ordinary, before Leave or Licence obtained of the King their Royal Master, and the Soveraign aswel of the one as the other.

For he that hath not been a very great stranger to reason, and the Customes and Laws of this Nation, aswell as others, may without any suspicion of Error acknowledge that it is and will be a due to Majesty and the Servants of it.

Yet the Civility long ago in Fashion, and not yet abolished in the Neighbourhood and Custom of Mankinde one towards the other might invite them

unto it.

When it hath been heretofore a part of the Law of Nations, Nature, Christianity, Neighbourhood, Civility, and the Practice thereof (which no Law or Good Custome hath, yet repealed) not to Arrest or bring into question at Law a Neighbours Servant for a Debt due, or Injuries received, with out an Intimation or Notice first given, or a kind of Licence obtained, to or from that Servants Master, to the end that the Love and Respect which ought to be betwixt them might not be dislocated or disturbed, and the offending Servants Masters attendance Business or Affairs prejudiced.

And being constantly held and observed betwixt Friends, Relations, Kinred, Neighbours and even Strangers, where any Respect was thought fit to be tendered, did probably give a Rise or beginning to that long and experimented Adage or Proverb, Love me and Love my Dog; Insomuch as a Neighbours Dog causing some mischief or Inconveniences by killing of Sheep, or biting such as he sup-

posed

posed were not well willers to the Family and came to his Masters house is not troubled or put into any danger of Beating or Hanging, without a Complaint first made to his Master thereof, for where the Master hath any respect, his Servants and all that do belong to his Family do not seldom partake of it.

From all which or some of those Causes or Grounds, Rights of Soveraignty and duty of the People tacito rerum & antiquitatis consensu by a long usage and consent of time and Antiquity came that hitherto uncontroul'd usage and Custom allowed, and Countenanced by our Common Laws, and reasonable Customs not contradicted or abrogated by any Act of Parliament or Statute Laws: That the Kings Manial Servants and Officers in Ordinary should not be Taken, Imprisoned, Arrested or Compelled to appear, in any Courts of Justice, in Civil Actions or Causes, without a Petition, for Leave or Licence obtained, First delivered unto the Lord Chamberlain of the Kings Houshold or other great Officer of the Kings under whose more Immediate Jurisdiction such servant or Officer is, whereupon after a Citation of the party, and if for debt, or otherwise, a short and reasonable time as fix moneths or fomething less (which in the Ordinary course of Process and Proceedings at Law and the vacations and absence of the Terms is not feldom as foon as they could by Arrest, or Compulsion arrive or come unto their Ends ) and many times a moneth or a Fortnights time prefixed for fatisfaction is as eafily procured as asked.

B 2

SECT.

#### SECT. I.

That there is a Greater Honour due unto the Palace and House of the King, then unto any of the Houses of his Subjects.

Or we may well believe that our Laws, Reafonable Customs, and the Practice of our Forefathers were not out of the way or mistaken in their Respects to the Servants of their Prince when his Aula, House or Court, wherein he and they Inhabited as a place separate from Common uses or Addresses tanquam Sacra, had a Majestatem quandam, certain awe or Majesty belonging to it which was as Ancient as the days of King Ahasuerus that great Monarch of Persia and (a) Media who Raigned from India unto Ethiopia, over an hundred and twenty seven Provinces, when (b) Esther, as we are informed by Sacred Writ, could alleage that all the Kings Servants and the People of the Kings Provinces, did know, that who seever, whether man or woman, should come unto the King into the Inner Court, who is not called, there is one Law of his to put him to death, Except (uch to whom the King (ball hold out the Golden Scepter that he may live. And none might enter into the Kings Gate clothed with fackoloth.

a Effber c. 4. ver. II. b Effber

c. 4 ver. 2.

e Xiphilinus in Nerone & Gr for. Thotofan in Syn-

tagmate 74ris. 378.

Tiridates the great King of Armenia coming to Rome to fee the Emperor Nero was (c) Commanded to lay by his Sword, which he refusing as supposing

it to be dishonourable to himself, was rather contented to have it as it was nailed in the Scabbard, it being a Custome at Rome, Ne quis in domo sen Palatio principis arma deferret sine ejusdem permisfione, that no man in the Palace of the Prince was without his Licence to Wear a Sword, although in other Places it was dishonourable for a Souldier not to Wear a Sword.

By a (d) Constitution or Law of the Emperors d Cujacius Theodofius and Valentinianus, the one of the West Comment. ad and the other of the East, made about the year of lib.11. Cod. Christ 385. Confecrata fibi ades, id eft, Inclita pala- Justin, tit. tia ab omnium privatorum usu & communi babitatione 77. extept.e fuerunt, The consecrated Houses set apart for the Emperors, that is to fay, their Illustrious Palaces were not to be made use of by any private person, or to be inhabited by them.

And many Ages after Theodoricsu King of the Gothes and Romans, though descended from a Rude

and Barbarous Nation, who were more used to Cottages then Courts, Stiles his Palace (e) Potentia e Goldastus Imperii decora facies, the Impresentation or Beauty Confite. Imof the Power of his Empire, Cum Legatis sub admi- perial bus. ratione, the wonder of Forraign Embassadors, Et I.m. 64.
prima fronte talis Dominus esse (reditur quale ejus habitaculum comprobatur, and the Master of the Pulatu. 15. House, and his Honour and Reputation is measured by his House.

By the old Almaine Laws made in the Raign of Clotharius King of France, In the year of our Lord f L.L. Ale-560. (f) Si quis in Curte Ducis hominem occiderit mannorum in aut illic ambulantem aut inde revertentem triplici Lindenbro were- gio. 111. 29:

were-gildo eum folvat, If any should slay a man in the Dukes Court in his going or coming thither or his return from thence, he was to forfeit as much as the were gild or mulet for the amends should amount unto.

g I.L. Bai variorum in tit. II.

gobard. in

Scandalis.

By the Laws of the old Baivarians or Bavarians confirmed by Dagobert King of France, (g) In the year of our Lord 633. Si quis in Curte Ducis scanda-Lindenbrogio. lum commiserit ut ibi pugna fiat per superbiam suam vel ebrietatem, quidquid ibi factum fuerit omnia secundum legem componet & propter stultitism suam in publico componat quadraginta solidos, si servus est alicujus qui hec commisit manus perdat, nullus unquam in Curte Ducis presumat scandalum committere. If any shall do or Commit in the Dukes Court any thing which is scandalous, and shall make any quarrel by his Pride or Drunkenness, he shall according to the Law compound for it, and pay forty shillings for his folly, and if he be a Servant which did it, shall loose his hand; For no man is to prefume to do any thing scandalous in the Dukes Court.

By the Laws of the Longobards, Written or compiled about the year of our Redeemer 637. h L.L. Lon- (h) Si quis in Consilio vel in quolibet conventu scandalum commiserit noningentis solidis sit culpabilis Lindenbrogio Regi, si guis intra palatium ubi Rex praest scanlib.1.tit.2. de dalum perpetrare prasumpserit anima sue incurrat periculum aut animam fuam redimat si obtinere potuerit à Rege, If any shall do any Scandalous Act in the Council or Assembly he shall be fined nine hundred shillings to the King, If in the Kings Court.

Court or Palace his life shall be in danger to be lost, Unless he can obtain the Kings pardon, a less fine if it be in the City where the King is not Resident,

and more in a City where he is.

And so much honour was not only in the Civil Law and Rescripts of the Emperors, but of the Gothish and other Northern Nations attributed to the house of the Emperors or Kings as it was frequently stiled Divina Domus which without any fuspicion of Idolatry might well be afforded unto the House or Residence of God's Vicegerents when holy Writ sticks not to say they are tanguam Dii as Gods.

Which occasioned withate or withate King of the Mercians being some of the Provinces in England now known by the name of Gloucestersbire, Worcestersbire, Oxfordsbire, Staffordsbire, and many other of the Neighbour Counties, when about the year of our Lord 825. he made a Confirmation to the Abby of Croyland in Lincolneshire, where he had hid and faved himself, when he fled from his i Charta Cen-Enemies, of all their Land and granted them ma- firm ti nis ny Priviledges ratified by a Concilium Pan Angli- Regis Witlacum, or Parliament holden at London the 26 day of fi. Minafteris May, Anno Dom. 833. By Egbert (i) King of the Dugdile Mo-West Saxons, and Witlase King of the Mercians, nasicon Anto give them a Priviledge that Quicung; in Regno suo glicanum pro quocunq; delicto reus vel legibus obnoxius, Who- 65 & 166. foever in his Kingdom guilty of any offence or ob- Spelman noxious to the Laws, flould fly to the Abby or Concilia, Da-Island of Croyland he should be there free from any Ecclesiastie. Arrest or pursuit, ficut in Asylo vel in Camera Re- 337.

gis propria, as in a Sanctuary or in the Kings own Chamber, then understood not to be likely to be molested with any Arrest or Imprisonment of any that were attending in it.

k L.L. Alu-

And put our wife and prudent King (k) Alfred redi. cap. 31. (who fate in the Royal Throne of our Brittaine about the year of our Lord 877. In the more incult and fierce behaviour of our English and Saxon Ancestors who thought his House deserved a Priviledge not allowed to Ordinary or Subjects houses) in minde to make a Law as Mr. Lambard in his Latine Version of our Saxon Laws reciteth it, Sapientum adhibito Confilio by the advice of his wife men much like a Parliament; qui in Regia Aula dimicarit ferrumve distrinxerit, Capitor & Regem penes arbitrium vita necifq; ejus esto, That he that should fight or draw his Sword in the Kings Palace or Court should be taken or punished with death or otherwise as the King pleased.

Which if the Annals of Winchester (1) may as they ought to be credited, were but the Laws of the Brittons translated into se Saxon Language by the affiftance probably of Affer Menevensis or of S. David's a Britton who was invited to his Court by that worthy Prince, and made as it were one of his

Effigie Domi-Domesticks or Manials.

The Courts and Palaces of our Ancient Kings being likewise such Asylums or Priviledged places as by a Law made by (m) King Edmond who Raigned in the year of our bleffed Lord 940. Si quis ad Templum Oppidumve Regium confugerit, eumq; alius oppurnarit damnove affecerit, he which should

Et vide Affer Menem L.L. Ed-

mondi, cap. 75 0 76.

1 Annales Wintensienfis

Ecclesia

M.S. in Bi-

blothesa Cot.

soniana (ub

tiani in A.

13.

venfis.

hurt or molest any that fled to the Temple or the Kings House should be punished; but withal enacted that, non fore ei qui sanguinem humanum effuderit Suffugio domum meam ni prius Deo ac Casi cognatis cumulate satisfecerit & praterea impleverit quodcung; ei ab Episcopo (in cujus Diecesi acciderit) imperatum, the Kings House thould not be a refuge for any man that had committed Manslaughter, unless he had first made satisfaction to God Almighty and abundantly recompenced the kinred of the flain and performed whatever was enjoyned him by the Bi-

thop in whose Diocess it happened.

By the Laws of (n) Hoell Dha or the good n Leges Ec-King Hoell of wales made and ordained in or about clesiast. Heell the same year, If any man made an affray or did Dhain Spel-Strike in his Court he was to pay a double Diray or manni Decret. Mulet and the like for doing it in the Church & Conflitut. (whereas in other places it was but a fingle Dirvy or fine ) (o) Ex quo disteni prefectus sive Oeconomus o Leges Ecin Aula fleterit post prandium in tribus festis Prin- clesiast. Hoeli cipalibus ponens in ea pacem Dei & Regis, Regina & Dha Regis optimatum Curia pacem illa granforedienti nufquam Wallia in erit refugium & Navt t'u omnium refugium, after Spelmanni that the Steward of the Kings House thall appear in Ecclesiaftic. the Hall in the three principal Feasts of the year, 408, 6 412. and causeth the Peace of God, and the King, Queen, and Lords of the Court, to be published, he that breaks it shall be allowed no place of Refuge or Sanctuary, nor shall any receive him; fi quis ergo refugium Regis & omnium violaverit nec ulquam nes ab unius refugio vel à reliquiis sanctorum defendi potest mis ab Ecclesia, If any therefore shall violate

Ecclefs.409.

that Sanctuary or place of Refuge of the King he shall be no where, or by any one Protected or by any Reliques of the Saints, unless the Church shall

Protect and defend him.

And fay the same Laws, Tria funt fine quibus Rex esse non potest, scilicet sacerdos ad missam celebrandam & adescas Regis & potus benedicend. & Judex Curia ad Causas discernendas & ad danda confilia & familia quoq; ad negotia Regis parata, Three things are so necessary for a King as he cannot be without them, that is to fay, a Priest or Chaplain, a Judge to hear Causes and give him Counsel and Servants to do the business of his family, Et ubicumq; sacerdos familia & Disteni & Judex Curia insimul fuerint, ibi erit dignitas Curia brevit llys Aula Regia licet Rex absensest, and wheresoever the Chaplain of the Family, and the Steward and Judge of the Court or Palace shall reside and be altogether, there, the Honour and Dignity of the Court shall be, and it shall be esteemed and taken to be as the Kings Court although he be absent.

D L.L. Ca-

And so well did King anutus (p) the Dane who ansi, cap. 56. Raigned here about one hundred and twenty years after, approve and allow of the before-mentioned Law made by King Alfred, as he made another much to the like effect, si quis in Regia dimicarit, Capitale effet nist quidem Rex hoc illi condonarit, That it should be capital or death unto any that should fight in the Kings Palace unless the King should be pleased to pardon him, Et nulle Citationes vel summenitiones liceant fieri cuicung; infra palatium Regis Westminster.

King

King (4) Henry the first about 275 years after q Charta the Raign of the before-mentioned withafe or withafe Henrici pri-King of the Mercians in his Charter or Grant to mi Mona. the Abbey of Winchester, doth amongst other Privi- Serio de Hide-ledges free them de Placitis & de omnibus quarelis Monasticon sicut terra illa ubi Domus mea sedet in Winton fuit Anglicanum unquam melius quieta, from all Plaints and Actions 211, 6 212. Issuing out of other Courts as much as the Land where his own House or Palace stood in Winchester ever enjoyed; which was then understood not to have been disturbed by them the said Charter being by Inspeximus afterwards in the 16th year of the Raign of King Edward the fourth, allowed and confirmed and in regard of the Honour due unto the Kings Houses or Palaces more then the Houses of any Subject or Private person they (r) are by L.L. Hen-Law and Ancient Custom allowed a Circuit or rici primi per compass of 12 miles round every way within the Cl. Seldenum Virge whereof in matters appertaining to the Royall Houshold or Servants for Contracts made one Fletalib. 2. with another in the same House, and of Trespasses cap. 2. & done within the Virge, the reward and Marshal of Cokes 10. the Kings House, and no Inferior or Commission- relat. en le ated, Jurisdiction were to intermeddle, Et nulla case de'l Citationes aut summonitiones liceant fieri cuicung infra Marchalsea. Palatium Regis Westminster, No Citations or Summons are to be made in the Kings Palace at Westminster which (until it was disused by the accession of whitehall unto the Crown in the Reign of King Henry the eighth; and after that appropriated to the Courts of Chancery, Law, Exchequer, Dutchy of Lancaster, Star-Chamber, Court of Requests,

in Lucem emiff.cap. 16. House of Commons in Parliament, who do now sit in that part of it heretosore called S. Stephen's Chappel and the House of Peers in another part of that Ancient House or Palace of our Kings of England) was their only House or Residence neer London and retains to this day so much of it's Ancient Priviledge of Freedom from Arrests, as any man Arrested there, in any Civil Action, before or in the Virge of any of the said Courts then sitting, although it be by Process Issuing out of any of the said Courts, and he had no business before depending in any of them, is propter reverentiam loci for Reverence to the Place to be presently without Bail or answering, discharged, and the Officer Arresting him, Imprisoned or otherwise punished.

Insomuch as Edmond Earl of Cornwall coming to London to the Parliament holden in the 18th year of King Edward the first and per medium majoris Aula Westminster versus consilium domini Regis transiffet passing through the great Hall at Westminster towards the Parliament ubi quilibet de regno es pace domini Regis, as the Parliament Roll mentioneth (not only Peers or Parliament men) licite & pacifice venire & negotia sua prosequi debet, where every man of the Kingdom and in the Peace of the King may Lawfully and peaceably come and follow their business, absque hoc quod aliquas citationes vel summonitiones ibidem admittat, without being troubled with any Citations or fummons complained of the Prior of the Holy-trinity London and Bogo de Clare, who thereupon were attached to answer the King, and (5) Peter de Chanet Steward of the King

s Placit.Parliamenti 18. E 1.n. 4. Ryleyes plac. Parl.6.7. & Pryns Aurum Regina, 28.

King Walter de Fanecurt Mareschal of the King (whose Inrifdiction was thereby infringed ) the faid Earl of Cornwall, and the Abbot of Westminster, for that the said Prior by the procurement of the said Bogo de Clare had cited the faid Earl in the Hall aforefaid to appear before the Archbithop of Canterbury at a certain day and place to answer such things as should be objected against him, to the manifest Contempt and Dishonour of the King and His damage 10000 l. prejudice of the Abbot of westminsters Liberty and his Damage 1000 1. 6 in prejudicium Officii predict. senescalli & marescalli manifestum & dampnum non modicum, and manifest prejudice of the Office of the aforesaid Steward and Mareschall and no small damage ad quorum officium & non ad alium Summonitiones & attachiamenta infra Palatium domini Regis pertineat faciend, When as it belongeth to their Office or Places, and not unto any other to make or cause summons or attachments within the Kings House or Palace & etiam ad dampnum predict. Comitis quing; mille librarum, and likewise to the damage of the said Earl 5000 l. Whereupon the faid Prior and Bogo confessing the Citation but pleading that they were ignorant that the place aforesaid was exempt, and that they did not understand that any contempt was Committed against the King, or any prejudice. done to his Officers by the Citation aforesaid, and in all things submitting unto the Kings grace, good will and pleasure, were Committed Prisoners to the Tower of London, there to remain during the Kings Pleasure; and being afterwards Bailed, the said Bogo paid

paid to the King a fine of 2000 marks and gave fecurity to the Earl for 1000 l. which by the intercession of the Bishop of Durham and others of the Kings Counsel, was afterwards remitted unto 100 l, and the Prior was left to the Judgement or

Proces of the Exchequer.

t Cokes 3.
part. Institut.
tit. misprison, 141.
Placita coram D mino
Rege in Parl.
apud Westm'
in prasentia
Regis, Anno
21. E. 1.

And (t) upon a Citation served in the Kings Palace at Westminster in the 21th year of the Raign of King Edward the first upon Joane Countess of warren then attending the Queen upon a Libel of Divorce at the Suite of Matilda de Nyctford, it was upon full examination of the Cause in Parliament adjudged (the King being present) in these words Quod pradictum Palatium Domini Regis est locus exemptus ab omni Jurisdictione ordinaria tam Regia dignitatis & Corona sue quam libertatis Ecclesia Westmonaster. & maxime in prasentia ipsius Domini Regis tempore Parliamenti sui ibidem, Ita quod Nullus summonitiones seu Citationes ibidem faciat & pracipue illis qui sunt de sanguine Domini Regis quibus major reverentia quam aliis fieri debet, Consideratum est quod Officiar' Committatur Turri London & ibidem cuftodiatur ad voluntatem Domini Regis, that the said Palace of the King is a place freed from all ordinary Jurisdiction as wel by reason of the Kings Crown and Dignity Royal, as the Liberty of the Church of westminster, but more especially of the Kings presence in the time of Parliament, so as none may prefume to make fummons or Citations there, and especially to or upon those which are of the blood Royal, to whom a greater Reverence then to others is due. The Kings Palace at Westminster (u) having as Sir

n Pascha 8 E. 2. coram Rege ret. 28. Norff. Sir Edward Coke saith, the Liberty and Priviledge, that no Citations or Summons are to be made with in it, and that Royal Priviledge is, saith he, not only appropriated to the Kings Palace at Westmin-ster, but to all his Palaces where his Royal Person resides (w) and such a Priviledge as to be exempted w Cokes 3 par. from all Ecclesiastical Jurisdiction, Regia dignitatis Institut. 141.

Kingly Dignity.

The Circuit of our Brittilb Ocean the Promontories with the adjacent Isles or parts encompassing our Britain from the North of England by the East, and South to the West, vindicated by our great and eminently Learned (x) Selden be- x Selden mare ing called the Kings Chambers, do justly claim clausum, cap. and are not to be denied Dimisionem velorum, a 22 6 26. striking or louring of Sail by the Ships of other Nations in their passage by any of our Admirals or Ships of War heretofore submitted unto, and acknowledged by our late causelesly contending Neighbours the Dutch and French, and was not only done by those Nations, and all other strangers Ships, in their passage by and through our Seas, but by them, and our own Ships in their failing upon the River of Thames, by the Kings Palace or House at Greenwich though he be not present, by striking their Topfail, and Discharge of a Cannon or Gun, feldom also omitted in other Countries, by Ships that pass by any Royal-forts or Castles of Kings in Amity with them as at Crominbergh and Elsenor, in or near the Baltick Sea.

And no small Civility or Respect was even in a Forreign.

Forreign Countrey or Kingdom, believed to be belonging, and appropriate to the Residence in and Palace of a King of England, and was not denyed to y Fleta lib. 2. our King Edward the first in the 14th year (7) of His Raign, when he was as Fleta tells us at Paris in France in alieno territorio, in the King of France his Dominions where one Ingelram de Nogent being taken in the King of England's House, or where he was lodged at Paris with some Plate or Silverdishes which he had stollen, about him, Rege Francia tune presente, the King of France being then in the House, the Court of the Castellan of the King of France claiming the Cognizance or Trial of that Thief, after a great debate thereof had before the King of France and his Council it was Resolved, Quod Rex Anglia illa Regia Prarogativa & hospitii sui privilegio uteretur & gauderet, that the King of England should enjoy his Kingly Prerogative and the Priviledge of his House, and that Thief being accordingly tried before Sir Robert Fitz John Knight Steward of the King of England's House, was for that offence, afterwards hanged at St. German lez Prees.

E. 3. Coram Rege Rot. 101 Cani.

cap. 3.

z Mich. 12: The Bedel (z) of the University of Cambridge was though he asked pardon for it, committed to the Gaol for Citing one William de Wivelingham at westminster Hall door, and Henry de Harwood at whose Suit it was prosecuted, committed to the Marshal and paid 40 s. Fine.

> Which necessary and due Reverence to the Kings Courts or Palaces being never denied (unless it were by Wat Tyler or Jack Cade, and the pretended Holy-

custome of the best Subjects of England, and all other mens going or standing uncovered in the Kings Chamber of presence (even in those houses where he is not Resident ) Privy-chamber, Bedchamber and Galleries, the being uncovered or bare-headed when the Scepter and Globe Imperial have been amongst the Kings Jewels and Plate kept in the Tower of London being accompted one of the Kings Palaces shewed unto any which have defired to see them which the Prince of Denmark as also the Embassador of the King of Sweden have not lately denied, and allows not the Ladies Wives or Daughters of Subjects (the Daughters of the King and the Wife of the Prince or Heir apparent only excepted) to have their trains carried up in the aforesaid separate rooms of State, nor a Lord of a Mannor to Arrest or Sieze his Villaine (a) in the Kings presence, forbids the Coaches a 27. Assis. of any but the Kings or the Queens or Heir apparents pl. 49. Wife or their Children, or of Embassadors introduced in the Kings Coach from Kings or a Republique fuch as Venice who in regard of the Kingdoms of Cyprus and Candie now under their Subjection are faid to have Tefte Couronné to come into the Courtyards with their Coaches, which the little Republique of Genoa in Italy hath notwithstanding their contest for it been lately refused both in France and Spain; in the latter whereof a Monarchy and Kingdom much inferior to England it is a great Honour amongst the Domesticks and Servants of that Court to be a Gentleman de la Boca for that fuch may attend the King at Dinner or Supper, and have at other times

times a priviledge to come into the Rooms of the Palace as far as a certain Hall beyond which no man is to pass although there should be no Guards

or Ushers to hinder it.

And no longer ago then in the month of December 1666 the Lady or wife of the Spanish Embassador in the Court of the Emperor of Germany at Vienna complaining of the Emperors High Chamberlain that The was denied by the guards to enter into the Anti-chamber of the Empress in her Chair or Sedan, the was answered by him and informed alfo by a message from the Emperor that it was the custom of that Court not to permit the Empress her felf that Liberty, which very necessary regard and respects always had to the Courts or Houses of Soveraign Kings or Princes, might befides their safeties which have not feldom been endangered by Brawls and Tumults swelled up into a multitude, be the reason that in imitation or reviving of those old Laws of King Alfred and Canutus, the Act of Parliament (b) In the 33th year of the Raign of King Henry the eight, did ordain the loss of the Right hand of any striking or making blood-shed within any of the Kings Houses or Palaces or the virge thereof, (Noblemen or others striking only their Servants with a small stick or Wand for Correction or with any Tipstaff at a Triumph or in doing Service by the Kings Commandment or of any of his Graces Privy Council or head Officers excepted ) and that any such offences or Murders Manstaughters or malicious strikings should be tryed by a Jury of twelve of the Yeomen Officers of the Kings Houshold before the Lord

b 33 H.8.

Lord Steward or in his absence before the Treafurer and Comptroller of the Kings Houshold and Steward of the Marshalsea for the time being.

And so tender have our Kings and Princes been of the Honour of their Princely Palaces and Sears and habitations of Majesty as they would not permit their Mercy to have any thing to do with their Iustice or to intercede for any mitigation of their just indignation against such as would but in the least let loose their passions, or Indiscretion to violate it, witness the case (communicated unto me by my worthy friend Sir william Sander son one of the Gentlemen of His Majesties Privy Chamber in Ordinary) of Mr. Mallet in the Raign of Queen Mary, who being a Gentleman Usher, Quarter Waiter of the Presence-Chamber, and having rebuked one Mr. Pierce a Messenger of the Chamber for some Negligence in the Queens Service, and being rudely answered to avoid the punishment for striking him, if he (bould draw or inforce blood, did spit in his face, upon knowledge whereof the Lord Chamberlain of the Kings Housbold, without any complaint of Mr. Pierce committed Mr. Mallet to the Marshal, and after some time punished him in this manner the Lord Chamberlain standing under the Cloth of State uncovered in the presence Chamber with the Officers of the Housbold, and others about him, Mr. Mallet kneeled down at the lowest step, and his offence in Order to bis sentence being read unto him, by a Gentleman Usber of the Presence with this Preamble, viz. For excercifing that Fewish Inhumane Act of Spitting upon Master Pierce, your fellow Servant in Court in the fight

and presence of the Cloth of Estate, against the Dignity of our Soveraign Lady the Queens Grace, the Honour of the Court, and the Authority and Power of the Lord Chamberlain; To which Mr. Mallet being fill upon his knees answered with an Humiliation forrow and Submission, and craved Pardon of the Queens Grace for his fault; Whereupon the Lord Chamberlain lightly Rapping Mr. Mallet upon the Pate with his white Staff, who craved pardon for offending the Authority and Power of the Court Represented by the Lord Chamberlain, Mr. Pierce was appointed to mave a Cudgel over Mr. Mallets head, in sign of satisfaction for the wrong received of him. And that being done Mr. Mallet was fined in a summe of money to the Queen, and after a day or two released: After all which the Chaplains and Clergy complaining that the holy Church was scandalized for that Jewish Action, Mr. Mallet was ordered to do Penance in the Chappel Royal, in a white-sheet holding a wax Taper burning, during the Office of Divine Service; and after those punishments Executed upon him, permitted to complain against Mr. Pierce for neglecting the Queens Service, and Mr. Pierce was for answering Mr. Mallet rudely turned out of his waiting or place, and came not in again until Mr. Mallet was pleased to make it his Blicitation and Request; And so great a Respect was always c Rotal. parl. given to the (c) Kings Palace or Court as it was holden to be a punishment and note of Infamy to Cokes 3 part. be Prohibited it; and was in the 18th or 21th year institut. 148. of the Raign of King James a part of the Sentence

21 Jac. 6

given in Parliament against Lionel Earl of Middlesex Lord Lord Treasurer of England for Briberies and Extortions, that he should never come within the Verge

of the Kings Court.

And that bleffed Martyr King Charles, was in the midst of His over-great Lenity or Meekness so careful to preserve the Honours and due Respects to His Palace and Court, as when Doctor Craig one of His Physicians had in the Kings Chamber given Mr. Kirk one of the Grooms of His Bed-chamber, fome offensive words, and Mr. Kirk meeting him the same day in some of the Court-lodgings had struck him with a blow of his Fift, and Doctor Craig complaining of it unto the King, and the King referring it unto the Lord Chamberlain of His Houshold who after Examination of the Fact Remitted the Punishment of the Offence to the King, He did in much Indignation Banish Mr. Kirk from the Court, into which he was more then a year, before he could by the Intercession of the Duke of Bucking ham, then the Great and Principal Favourite, be re-admitted; And that Pious and Excellent Prince was so apprehensive of any difrespects to His House and Palace, as meeting one day or night the Earl of Denbigh then Lord Fielding in his Masking Suit, as he was passing through the Privy Galleries towards the Banquetting House, stayed him, and turned him back to go a more Common-way.

And was no less watchful to prevent any thing which might be prejudicial or derogatory to the honour of the *Garter*, whereof he was Soveraign in the Palace or House where his Hononr dwelt,

As when at another time finding the Lord Percy now Earl of Northumberland, Mr. Jermyn now Earl of S. Albans, and Mr. Henry Piercy in the Privy Gallery or Lodgings with blew Ribbons tyed or hanging about the upper part of their Legs or Boots, he was so displeased therewith as he would not be pacified until he had called for a pair of Scissers and had with his own hands cut or

clipped them off.

And well might it be observed in England when the Ultima Thule and our less Civilized Neighbours of Scotland, Infected with the Careless and over-bold behaviour of some of their late Presbyterian Clergy, towards Royal Majesty, are not without those dutyful respects of being bare and uncovered in the Presence Chamber or Chief Rooms of their Kings Palaces although they be absent, and out of the Kingdom; and when any Acts of Parliament are agreed upon the Kings high Commissioner Presiding in Parliament in his absence, bringeth the Acts of Parliament to the Kings Chair of Estate, upon which, and a Velvet Cuthion, the Royal Scepter being laid, the Lord Commissioner kneeling before it, and touching it with the Scepter gives a Sanction and Authority unto those or any other Acts of Parliament, in that Submiss and dutyful manner touched therewith, and makes them to be of as great Validity as if they had been Ratified by the Royal Signature.

And with more or a greater Reason, might Kings and Free-Princes claim a Veneration to their Palaces or Houses, when Bishops Antiently

had their Episcopia (d) or Houses so Respected d Consil. as a Synod or Council thought fit to Order it, a Meldenfe.ca. too much or more then ordinary respect when 26.6 Spelthey Decreed, Suggerendum est, & ex Divino man- man. Glosfer. dato intimandum Regia Majestati ut Episcopium quod in voce Episdomus Episcopi appellatur, Venerabiliter & reverenter copium. introcat, &c. It is to be declared and intimated to the Kings Majesty that he enter the Episcopium, which is the House of the Bishop Reverently.

And not very long ago in the Raign of that Vertuous King Charles the first, an Action of Battery being brought by Sir Francis Wortley Knight and Baronet, against Sir Thomas Savile Knight, afterwards Lord Savile and Earl of Suffex, for affaulting and wounding him at Westminster Hall door, one or both of them being then Parliament men, the Jury gave a Verdict for Sir Francis Wortley with three thousand pounds Damages, the Offence being aggravated to that height, in regard that it was done so near or in the Face of the Court of Common Pleas, the Judges then fitting, which could have no greater or better reason for heigthning that offence, then that it was done in that Ancient Palace of our Kings, and the Place where the King Administred Justice to His People by His Judges, who Represented His Authority in that their limitted Jurisdiction.

And but lately when fitting the Parliament in the moneth of December 1666, the Lord Saint John of Basing Eldest Son of the Marquess of winchester being a Member of the House of Commons in Parliament, had in Westminster Hall (no Court of Iustice.

e Cokes 3

Justice then and there sitting) pulled Sir Andrew Henly Knight by the Nose, whereby he according to the opinion of (e) Sir Edward Coke had forparce institut, feited his Lands, Goods and Chattels (although eit, misprisson. his reason offered for it, that the offence was so punishable, because it might tend ad impedimentum Tusticie, to the hinderance of Tustice was not alone sufficient for that, it may more truly be understood to be propter venerationem loci for the Reverence and Respect due to the KingsHouse or Palace) was so affrighted with the Penalty and consequence of that Offence, as he procured the House of Commons (who could not tell how to believe the unhappy heretofore unadvifed and never to be proved Doctrine of the pretended Soveraignty of that House) to go with their Speaker unto the King at whitehall and intercede for his Pardon.

> And shortly after at a Conference in the Painted Chamber, betwixt the Lords and Commons in Parliament, some hot words happening betwixt the Marquels of Dorchester and the Duke of Buckingham, who upon the lye given him by the Marquels of Dorchester had pulled him by the Nose or plucked off his Perugue, they were both Committed Prisoners to the Tower of London, and within two days after upon their submission to the House of Peers Released; but the Duke of Buckingham coming after to the Kings Court at whitehall before he had asked leave of Him or His Pardon, the King did forbid him the Court, alleadging that howfoever the House of Peers in Parliament had pardoned

pardoned him for the Offence Committed against them, yet he had not forgiven him the Offence which

he had Committed against him.

And in support of those Observations and honors so justly due unto the Place of His Royal Residences, the Lord Chamberlain, did lately cause a Constable to be Imprisoned for an Ignorant and Indiscreet pursuit of a French Lacquaie, who had slain an Irish Foot-boy, into whitehal, and as far as the Royal Lodgings of the Queen, where he took him: and shortly after deservedly Imprisoned one Mr. white a Merchant, for bringing two of the KingsMarshals-men into the Privy-galleries, and neer the Council-chamber-door, the King sitting in Council, bade them Arrest an Agent or Envoy of the Duke of Curlands, and he would Indempnishe them; Who were notwithstanding severely punished.

Which just and fitting observations due unto the Mansions of Kings and Princes; Cromwel that Leader and Conductor of the Rable, and Scumme of a Rebellious part of the people, and grand contemner of all Authority but what himself had usurped, and of all Ancient Orders, Rites, Customs and Usages, did not think to be unbecoming that Eagles ness into which He and His devouring Harpyes had crept, and the House wherein the Kings Honour lately dwelt, when he Committed Sir Richard Ingoldsby then one of his Colonels, but afterwards a Penitent and Loyal Subject of His Majesty that now is, Prisoner to the Tower of London, for striking one in the Stone-

gallery at whitehall.

And so unquestionable was a more then Com-

mon or Ordinary Honour and Respect to be given to the Houses and Courts of our Kings, as some of our Ancient Nobility have by that honour which our Kings did Originally confer upon their Perfons, in the Grant of Earldoms and Honours gained, by an Usage of Time and Custom, some more then Common Priviledges to their Chief Houses, Castles and Lands, anciently belonging to their Earldoms; So as their Lands belonging to their Earldoms have been exempted from the Contribution of the Wages of Knights of the Shire elected to be Parliament men, and their Houses from any Search by any Constable or Ordinary Officer, and in all or many of the Records or Memorials of the Kingdom have been frequently called or termed Honours, as the Honours of Oxford, Arundel Lincoln, Leicester, &c. for the Lands belonging to those Earldoms; and there is to this day a Custome at Arundel Castle that none but the Earl thereof (the Soveraign and Heir apparent exempted) have been permitted or are to Ride or come into the Castle Gate with his Hat on or covered.

Those vast Empires of the Ottoman or Turk, Persians, Mogor, and King or Emperour of Japan, are not without those or the like Reverences, not only by their profound filences and observations more then ordinary in their Apartments and Retirements, but by other Demonstrations of Honour and acknowledgements of Respect to their Soveraign Princes Houses or Palaces.

Nor are such or the like Reverences or Respects

due to the Houses or Courts of Kings, unknown or disused even amongst the more Heathen and Barbarians who although they are too much conversant with Ignorance, Rudencis and Incivilities are notwithstanding by the Principles Law and light of Nature, guided and directed unto it.

In the City and Countrey which was the Queen of (f) Sheba's, the people do use such Reverence to f Purchas the Kings Houses or Palaces, as although the Gates Pligrimage do stand open, no man dares presume to enter or to 2 part & voytouch them.

Before any do come to the Court or Tent of Prete Cis Alvar John-Emperour or King of Ethiopia or the Abaffines, 1053. they do alight of their Horses and begin to do their Ibid. 1071 accustomed Reverences, stooping down with their & 1033. right hand unto the ground, and betwixt the Ibid. 1107. Prete or Kings Tent, and the Tent of the ludges, no man passeth on Horse-back in Reverence to the King and his Justice, but all do alight and go g Voyage on foot.

When any do come to the first Hall of the King zard de la of the Maldives (g) Palace (who is King of val. 2 part thirteen Provinces, and One thousand Isles) where His guard are, No Lord or Plebeian, man, woman or child dare go further except the Domestical Offi- 1664. cers of the King and Queens, and their Slaves and h Mr. John Servitors.

At the King of (h) Achens Court in the East on of his way-Indies, before any man can come into the Kings Presence, he must put of his Hose and Shooes, hold the Palms of his hands together, lift them above his head and bow with his body.

age of Francis Alvareza

Francis Py-Purchas Pilgrimage, 1648,1663, Davisrelatiage to the East Indies I par. of Purchas Pigrimage, 132.

Amongst the rude and fierce (i) Tartars he i Paulus Vethat hath been present with one that died, was not netus in 3 to come into the house of the Mangu Chan within a pert of Parchas Pilgriyear after.

mage, 66.

The Barons and people who do come unto his Court, do within half a Mile where the great Chan Resides make and continue a great silence (a fign or token in the Eastern Countries of great Reverence) every Baron carrying a little fair vellel to Spit in, and after Covers it (none daring to (pit in the Hall ) into which (k) before they do enter, they

k 3 pari Purchas Pilgriput off their Buskins, and put on Furre Buskins of white mage, 88.

Leather, giving the other to their Servants.

In the City of (1) Nanquim is a Table of Gold 1 Relation of wherein is written the Kings name in Memory of his Galeota Pe-Residence there, which stands in the Palace Covered: rerain 3 part and being to be seen upon some of their Festival days of Parchas Pilgrimages covered, all the Nobility of the City do go to do it 2:5. Reverence.

In China (m) and at Pequin they which are to m Ricius & Trigantiusin pass by the Kings Palaces do descend and alight from 3 part of their Horses and go on foot until they be passed; Yea, Purchase although the King doth not there reside, and they do Pilgrimage at other times make their Reverences unto the Kings 392 6 353.

Empty Throne.

And fo much by the light of nature and the dusky and obscure glimmerings of it, were the Palaces and Refidences of their Kings and Princes Reverenced by the (n) Mexicans a Populous Nation in the West Indies as all that were to come or appear before Montezuma their King or Emperour, were except some Princes, his kinsmen to come bare-foot. Such

n 3 part Purchas Pilgrimage, 1139.

Such therefore and fo great Honours being fo deservedly due to the Houses and Habitations of Kings and Princes, the Affairs or business of the Soveraign, Acted either within or without it, are not certainly like Efan to be deprived of it's Bleffing or what is appropriate or belonging to it, but it ought as a very great truth to be subscribed unto, by every one that will not abjure his own Reason, the Laws and Reasonable Customes of England, Prudence and Practice of all other Nations of Christendom, and where ever the Light of Reason and Divine Wisdom have imparted their Glories, that the business and affairs of the Kings-Servants in Ordinary are to be preferred and Take Place of the Affairs of any Subject or Private Person.

## SECT. II.

That the Business and Affair of the King, about which any of His Servants or Subjects are Imployed, are more considerable, and to be Regarded then the Business and Affairs of any of His People.

When the General and Universal consisting of all the parts of a Body Politick, and the Safety, Care and Concernment of the whole; must needs surmount any one or two, or any Particulars, or some Private mens necessities or occasions.

2.708.

o Genes. 13. casions. (e) The brawls and controversies betwixt the Herdsmen of Lot and the Righteous Abraham, for Pasture for their Flocks and Cattel, were understood in that Particular to be no less then their Masters own Concernments; (p) And the Servants of every Master, and consequently their business are by God himself, and his never Erring Wisdom justly reckoned in the Tenth Commandment or Decalogue, as a part of the Masters goods and

p Exed, 20.

Comment. ad 1.19,5.mm. 2. 6 4. 6 ad Sett 4. de

Estate.

verborum fignificatione & L. Adi les, 25. Institut. de Injur. Befoldsus in Differt. Furi. Politic. 48.

The Civil Law allows us to conclude, that, 9 Gadd win (9) Servi rerum appellatione comprehenduntur, Servants are accounted to be a part of the Masters Estate & familia significatione Servi includuntur, and in a family Servants are included, Familia continentur liberi homines bona fide servientes in a family are contained and intended Freemen (afwel as Villains or Bond-men) which ferve therein, (r) Et familia unum quoddam Corpus conr Selt. 2.3.6. situit; inde patimur Injuriam etiam per liberos, uxorem, servos, & etiam mercenarios nostros, for a Family makes and constitutes a certain body, and thereupon the Master of it may be said to be wronged in his Wife, Children and Servants, and fometimes in those which are hirelings.

> And it was neither forbidden or disallowed by the Civil Law in Ancient times before better and more convenient Securities by Pactions and Obligations were found out, Serves & Ancillas tanquam bona & Catalla oppignorare to Pawn or Deliver in Pledge their men Servants or maid

Servants.

Our

Our Saxon (s) Laws intended no less, when s L.L. Ine they did Ordain that every Lord or Master should cap. 18. & L. L. VE-

be obliged to bring his Servant to Justice.

Our liber Censualis or Doomesday Book, made thelstani. 60, about the 16th year of the Raign of William the Conquerour as an Inquisition or extent of every mans Estate in the Kingdom, both Real and Perfonal doth therein Reckon, Servos, Ancillas & villanos, as well Men-servants, and Maid-servants as Villains or Bond-men.

And our Laws do allow an Action in the Masters name, for the beating or wounding of a Servant, per quod servitium servientis sui amisit, where-

by he lost the use or service of his Servant.

By the Laws of the Old Almains (u) uniuf- n L.L. Alequisq; pasem habere debet ad ducem veniendo & de manorum in illo revertendo. Et nullus prasumat hominem de duce Lindenbrogio venientem aut ad illum ambulantem in Itinere inquie- Tit. 29. tare quamvis culpabilis sit, no man ought to be molested in his journey or going to or from the Dukes Court, although there might be any Action or Cause to trouble him.

By the Laws of the Lombards (w) or Longo- w L.L. Lonbards, si quis ex Baronibus nostris ad nos venire gobard in voluerit securus veniat, & illesus ad suos rever- Lindenbrogio tatur, & nullus de Adversaris illi aliquam Injuriam lib. 2. Tit.4. in itinere aut molestiam facere prasumat, If any of our Barons have an intent to come unto us he is fafely to go and come, and none of his adversaries are to do him in his Journey any wrong or Injury.

By some Laws made in the Raigns of the Emperors

x Lindenbro pero gius lib. 4. lus a inter Capitl. latio Caroli. situr

perors (x) Charlemaigne and Lewis his Son, nullus ad palatium vel in hostem pergens vel de Palatio vel de hoste rediens tributum quod transituras vocant solvere Cogatur, That no man coming to his Palace or going against the Enemy or returning should be compelled to pay the Tribute called Passage-money.

y Cujacius Comment. ad lib. 12. Cod. Justinians 1635 & Marculfi formule. The Tractatoria & Ewettiones (y) allowed by the Western and Eastern Emperors, that Stables and Provisions of Horse-meat, and mans meat should be provided sumptu publico at the Peoples charge, for such as Ride post, Travailed or were sent upon the Emperors Assairs, may inform us, how great the difference is and ought to be betwixt the Kings Assairs and those of the Common People.

z L,L. Wisigoth in Lindenbrogio, lib. 2. Tit. 4.

The Laws of the wifigoths (z) a People not then much acquainted with Civilities compiled about the year or Era of our Lord 504 may teach us the value of Princes cares of their own, and the Publick Affairs managed by their Servants or who foever shall be imployed therein, Quod antea ordinare oportuit negotia Principum & postea populorum, when they declared that the Affairs or concerment of the Prince, ought to take place of those of the People, Quia si salutare Caput extiterit, rationem colligit qualiter Curare cetera membra possit, because if it be well with the head, it will be the better able to take care of the rest of the Members, Et ordinanda primo negotia Principum, tutanda salus, defendenda vita, sicque in statu & negotiis plebium ordinatio dirigenda, ut eum salus componens prospicitur Regum

Regum fida valentibus teneatur salvatia populorum; That in the first place the business of the Prince. the safety of his life, and the defence of his Person are to be heeded, and the Affairs of the People fo Ordered, as whilft a fufficient provision is made for the fafety of the Prince the good of the People may be established.

Of which our English Laws, have such a regard as they would (fome few Cases only excepted) dispence with any mans not appearing or coming to Justice, If he though not the Kings servant in Ordinary fent by His Attourney the Kings Writ of Protection (a) fignifying that he was fent or Im- a Vide Regi-

ployed in the Kings Service.

That if any Archbithop, Bithop, (b) Earl or Tit. Presell. Baron do come to the King by His Commandment, b 9 H.3.c. 11 passing by any of His Forrests, he might notwithstanding the great severity of the Forrest Laws against such as did Steal or Kill any of the Kings Deer or Venison take or kill one or two in their going and return.

The Register of Writs doth (c) bear Record c Register of that where one of the Kings Servants hath been re- Writs. 19. turned of a Jury or Summoned probably to be a Tit. Warranwitness or upon some other occasion, to attend the diti. fome Inquisition or Inquest to be made in any other place then the Kings House or before any other Judges or Magistrates, a Writ hath been sent under the Great Seal of England to excuse his absence, because he was the same day to attend the Steward and Marshal of the Kings House about some affairs of the Houshold which may thew

Ster of Write

thew that the King had a mind aswel as reason not to permit the necessary attendance of His own Servants in or upon His Houshold occasions to be omitted to wait upon strangers or other mens busines in Courts or matters of Justice.

And the Law doth to much prefer the Kings bufincs above the Common Peoples as that all Honor and Reverence is to be given to the Kings Privy

Council.

d Coke 4. Inftit. 53. Lib. 5. D. de offic. ad [eff. Spartianus in Hadrian. & Gutherius de offic. Domus August.lib. 1 CAP. 17.

For that as Sir Edward Coke (d) faith they are partes Corporis Regis, incorporated, as it were with him, are profitable Instruments of the State bear part of his cares, and which is no more then what the Civil Law allows them, when it terms them, Administri, Adjutores, Adsessores, helpers and Adsessors, oqui arcanis Principis interesse meruerunt in Contubernium Imperatoria Majestatis adsciti, and which deserve an Interess in the Princes secrets and affairs of State, and are as Spartianus saith, admitted as it were into the Society of Royal Majesty.

Herberts Cafe.

Where the body of a Debtor before the Statute e Coke 3. Rep. of 25 of King Edward (e) the third have by some Sir William been believed, not to have been liable to Execution for debt at the Suit of a Common Person; yet it was adjuged to otherwise in the Kings Case, for that The aurus Regis est pacis vinculum & Bellorum nervi, for otherwise the King might want His Money or Treasure which is the Bond of Peace and Sinews of War.

F Register of Writt, 281.

· Protections under the Great Seal of (f) England have not only been granted by our Kings but allowed by their Judges to secure some Merchants,

Strangers,

Strangers, from Arrests or Trouble in Corporibus, rebus & bonis, in their Persons, goods or Estates, until the Debts and Money which they did owe the King should be satisfied, and to suspend any Judgements or Executions had against them, for other mens Debts until the King should be satisfied the monys due unto him. And in the mean time taking them and their estate, in their Royal Protection, did prohibit any Process against them to be made in any of their Courts of Justice, or that they should be Arrested or distrained for any debts or accompts, the Kings debts not being satisfied.

And although by an Act of Parliament or Statute made in the 25<sup>th</sup> year of the Raign of King Edward the third (g) cap. 19. Their other Creditors g 25 E. 3. might notwithstanding bring their Actions, and cap. 19. Prosecute thereupon; yet they were not by that Statute to have Execution upon any Judgements gained for their Debts, unless they would undertake to pay the Debts due unto the King: and then he should be authorized to sue for, recover and take the Kings Debt, and have Execution also for his own Debt, the Preamble of that Statute men-

tioning that during fuch Protection no man had

used or durst to implead such Debtors.

In the 8th year of the Raign of King Henry the Rot. Par.

6th it was agreed in Parliament that all matters 8 H.6.m. 10.
that touch the King should be preferred before all
other as well in Parliament as in Council.

And no longer ago then in the (h) 34th and h 34 & 35. 35th years of the Raign of King Henry the Eight, C.H.S.c.13. cap. 13. It was upon Complaint made in Parlia-

ment

ment that it was usual in the County Palatine of Chefter, that upon the suggestion of any Person that was Indebted to any other Person or Persons, coming to the Exchequer within the faid County Palatine (to pay the Kings Rents and Monies) and there taking a Corporal Oath that he or they shall pay his or their Creditors, at such time as he or they (bould be able thereunto, the Officers of the said Exchequer, have used mithout Warrant to grant out of the said Exchequer, a Writ in Nature of a Protection whereby the Creditors were greatly delaid, and in manner defrauded to their great Impoverishment; It was Enacted that the faid Writ of Course without the Warrant of the King His Heirs or Successors containing any fuch Protection be no more granted, any U fage or Priviledge to the Contrary notwithstanding, which gives an Allowance to any that in fuch a Case shall be granted by the King Warrant.

1 Reformatio frasticarum Imp el. 1571.

By the Reformation of the Ecclefiastical Laws intended to be made by King Edward (i) the legum Eccle- fixth by His Commission directed unto thirty two Commissioners as well Lay-men and Doctors of the Civil Law, as Bishops and Divines Issued by Direction of an Act of Parliament made in the third year of His Raign, Divine Offices may be celebrated in familiis Nobilium quibusq; non licet occupatione publica distractis in Communibus Ecclesis verfari, in the Houses or Families of the Nobility, who by Reason of the Kings and Publick Affairs could not so conveniently come unto their Parish Churches.

And it was not wont to be denied either to be Law or Reason in England, that such as Rid post upon the Kings business, might if his Horse were tired or for the greater speed in the Kings Affairs-Exchange or take any mans Horse whom he met

upon the way.

And therefore when the Houses of Kings and Princes, as to their bare Walls and Rooms abstractly considered, are so greatly to be honoured, respected and distinguished in their Rights and Priviledges, from those of the Nobility and Common People, and every thing done within that Precinct. or Virge, being in the Placita Aula Records or Rolls of the Marshal of the King in the Raigns of King Edward the first, and King Edward the third, (k) In k Placita Trespass and other Actions, depending betwixt the Aula. 33. Kings Servants or fuch as might fue there alleaged E. 1. 6 20. to be in Presentia Regis in the Kings Presence.

And the affairs or business of the King whether domestick or Publick being of so great a Concernment to the People, and so much to be preferred before any others or that of the Private, the Servants certainly who do attend their Soveraign therein may challenge some more then ordinary Priviledges and: Respects then others of His Subjects, which are not:

His Servants in Ordinary

SECT.

## SECT. III.

That the Kings Servants in Ordinary, are not to be denied a more then Ordinary Priviledge or Respect, nor are to be compelled to appear by Arrest or otherwise, in any Courts of Justice out of the Kings House, without Leave or License of the Lord Chamberlain or other the Officers of the Kings Housbold to whom it appertaineth, first had and obtained.

full Ages could never tell how to deny; for if we will look into the Records of time which by fhewing us the Errors and Successes of former ages and experiments, and teaching us how to Judge of the New by the Old, are and will be found to be the best Instructors if we believe as we ought the Divine Inspiration and Counsel of d Jav. 6 v. 16 the Prophet Jeremy (d) and do but observe the old ways and paths of a better world, there will be

enough found to justifie it.

For the book of God will evidence the great Honour and preferments given in the morning of the world unto Foseph, that great Pattern of Fidelity and preferment for it by Pharach King of Egypt, when he set him over his house, made him Steward thereof, took his Ring off his hand, and put upon his, Arrayed him in vestures of sine Linnen, put a Gold Chain

Cham about his neck, made him to Ride (e) in the e Gen. 41.v. fecond Chariot with a cry before him, Bow the 40,41,47.

Knee.

And by the Custom of the Nation or Children of Israel (from whom the Egyptians are believed to have borrowed some of theirs) where the Beams of the Divine Wisdom enlightened their Laws and Customs, the Servants of the King or Prince were carefully chosen and merited a more then Ordinary regard which the well meaning Uriah well understood, and had no mean opinion of when he ranked David's Servants amongst the no small concernments of that Nation in refusing to go down unto his own house and refresh himself, because the Ark of God and Israel and Judah (f) did abide in \$2 Sam. 11.

Tents, his Lord Joab (the Kings Lieutenant Ge-vers. 11.

neral) and the Servants of the King were encamp-

ed in open field.

And we find David so careful of the honor of his Servants or Embassadors, as he made the misusage of them by the King and Children of Ammon to be a cause of his War against them and their destruction, and was so unwilling till necessity enforced it, that his own Subjects should know of the scorns and reproach cast upon them, by cutting their Vests or Garments so short as their naked Buttocks might be

seen, and the shaving off only the half of their beards, 2 Sam. 10. as he gave them Order to tarry at Fericho until their vers. 2, 4, 5.

Beards were grown out.

When the King of Syria sent his Letters of re- 2 Rag. sap 5. commendation by Naaman the Captain of his host, v. 13.6 & 7. and a great man with his Master, to recover him of his Leprosic

Leprofie the King despairing to get it effected, and not believing that the Prophet Elista could do it, and searing least the King of Syria might take the not recovering of his Servant, as a disrespect unto himself rent his clothes and said (unto his Council or those which were neer unto him) Consider I pray you and see how he (the King of Syria) seeketh a

quarrel against me.

All which with the Excellent Order of David's Servants, the Magnificence of Solomon's house (which was in building thirteen years by some thousands of workmen) with his Servants various Offices and Honourable Imployments therein, did not a little contribute to their respect, The Princes or heads of the Tribes attending upon the King, and the Honourable women upon the Queen, mentioned in the 45th Psalm of David. And the Honourable opinion which Solomon the wisest of men had of the Service of a King, when he said (which is Registered amongst his wise sayings or Proverbs) That a man diligent in his business (g) (bould stand before Princes, he shall not stand before mean men.

g Prov. 22.

The Princes that were in the House of Jehoiakim king of Judah recorded in the 36th Chapter of of the Prophet Jeremiah (h) and of Zedekiah King of Judah, in the 38th and 41th Chapter of that Prophet, and Benaiah one of David's mighty men, Captain of his Guard, and others frequently found to be Attendants or Resident in the Houses or Palaces of Kings thorough the Current of Holy Writ; And the Requisites belonging unto those which

h fer. 38.

which Nebuchadnezzar King of Babylon required in the captive Children whom he intended to breed up in his Court that they (bould be well favoured, skilful in all wisdom, and cunning in knowledge and understanding and such as had ability in them to stand in the Kings Palace, may give us to understand how much Kings and Princes were concerned in the Honour or dishonour done unto their Servants. and how greatly they were effected in former ages: and that the fews were not in an Errour when they and some of their Rabbins (i) did ascribe so much i Besoldus in Honour to the Servants and Service of the King or opere Politics. Soveraign as they conceived it to be de honore Re- cap. 3. gum ut tales ministri qui Aula semel initiati sunt aliis vilioribus officiis extraneis postea nunquam contaminentur ut nemo utitur servis Ancillis vel minifiris ejus nist alius Rex ejus succe for, for the Kings Honour that those that had once served him should never be imployed in meaner business or afterwards ferve any other then his Successor: which may be the reason that their names were so punctually entered into the Register of the Kings Servants as Nehemiah (k) could long after the many Ca- k Nehem.7. ptivities, Toffes and Troubles of that Nation, by vers. 57. the Divine Judgement and Indignation find in an old Register the Names and Genealogies of Solomon's Servants.

That mighty King Ahasuerus did but exercise his just Power of giving Honours and Rewards to his Servants, when he advanced Haman, and set his Seat above all the Princes which were with him, and Commanded all His Servants which were in the

Gate

Gate to Bow and do him Reverence; And Haman being afterwards demanded by the King what should be done to the man whom the King delighteth to Honour (little thinking that Mordecai whom he hared and was one of the meaner fort of the Kings Servants, or any other then himself should be the better for it) readily and without any doubt or scruple answered and said for the man 1 Eliber c.1. whom the King delighteth to Honour, (1) Let the Royal Apparel be brought, which the King useth to wear 2.1.06.2.6, and the horse that the King rideth upon and the Crown Royal which is fet upon his head; And let the Apparel and Horse be delivered to the band of one of the Kings most Noble Princes that they may Array the man withal whom the King delighteth to Honour, and bring him on Horseback through the Street of the (ity and Proclaim before him, Thus shall be done to the man whom the King delighteth to Honour, with which the City of Shafban were so well contented as it is faid, that they rejoyced and were glad.

m Efther c. I. v. 14. Ezra c. 7. verf. 15.

7,8 9.0 c.7.v.15.

> The next (m) unto the King was Carlbena, Shethar, Admatha, Tarfhifh, Meres, Marfena and Memucan, the seven Princes of Perfia and Media, being his feven Counsellors, which saw the Kings face, and which fare the first of his Kingdom.

> Those that served Kings and Princes were allowed Ornaments and Apparel which the Common and Ordinary fort of People could neither claim nor merit; and therefore that greatest Lord of the Earth, and Master of Humility made an honourable mention of them when he concluded that they who

> > were

were (n) molliter vestiti and did wear soft n Matt. 11: Cloathing were in Kings Houses, and the Emperour vers. &. ( o ) Theodofius above 300 and 30 years after our Sa. o Editt. viour Chirst had left the earth and in an Edict or Theodofis. Proclamation forbidding the use of Silk Raiments to 1 4. Cod. all people of what kind or profession whatsoever, excepts himself and his Servants, and faith solo Principi ejusque Domui dedicatur, that the wearing of fuch apparel belonged only unto the Prince, and those which attends him in his House.

By the Lex Julia a Law made by Julius Cafar, tenetur tanquam reus lese Majestatis, qui Legatos, Oratores (p) Comite(q; corum (all of them being P Ulpian. I. but the several degrees of the Servants of Majesty) leg. Julia 7. pulsaverit, (which in the Language of those Laws vi pub & and times and some after-ages fignified an Arrest or 1. 46. P sis. 6. Compulsion as well as an Assault or beating) vel Injuria affecerit, he should be guilty of high Treafon, which should Arrest, Bear or wrong any Embassadors or Agents, or any of the Soveraigns Attendants or Affiftants.

The divers great and Honorable Offices and Imployments in the Houses of the Western and Eastern Emperors, as the (q) Comites facri Palatii, Comites q Pancirollin sacrorum largitionum, Magister Officiorum cum mul- in Notitia utis aliis, &c. Earls of the Sacred Palace, Earls or tring Imper. great Officers of the Privy Purfe, Lord Steward of the Houshold, Lord Chamberlain, &c. May perswade us to more then an opinion of the necesfary Respects and Honours due unto them in the Exercise of their Offices and Places about their Soveraign.

The Guards of the Royal Palace of the Emperours of the West and East, Privilegium retinebant, (r) had a Priviledge not to be Cited or tring Imper. Convened before any but their own Captains and Commanders. cap. 51.

The Fabricences (s) or such as furnished the 3 Ibid. ca.66. Magazines with armour nulli oneri Civitatis erant

obnoxii were freed from publike Offices.

The Comes (t) Domesticorum Equitum & Pet Ibid. ca.89. ditum, Earl or Commander of the Horse and Foot-Guard was the Protector Domesticorum, Defender of the houshold Servants, defunctorum quoq; Parentum Domesticorum filii locum subibant; etsi ob teneram atatem armis apti non erant, nihilominus Protectorum matriculis inscripti quaternas Annonas id est victum quatuor hominum accipiebant, and the Sons of those Domestick Guards were to enjoy their places after their Fathers decease, And if they were so young as not to be fit for it, were notwithstanding to be entered into the Protectors Books or Registers, and to have a proportion of diet or allowance fit for to feed them.

Claudius Augustus Casar (u) punished a Tribune p Dion. 1.60. of the people (then (though not so much as formerly) a mighty Officer, Darling and Favourite of

them) for beating of one of his Servants.

W Pancirol. in Notitia utriu[q; Imperii, c. 90:

The (w) Primicerius or Chief of the Emperours Bed-chamber, and all other of the Bedchamber were Exempted from the Tax of finding Horse or Souldiers or of giving Bail in any Action or Suite before the Magister Officiorum or Principal Officer in the Court, so styled not unlike saith

the

the Learned (x) Cujacius to the Prevost de l'Hostell x Cujacius in France, Et qui absunt Reipublica causa va- Comment. ad cationem habent, such as are Imployed about the 1.10.Cod. Instiniani,

Publike are to be Priviledged.

To the Prafecto Pratorii (y) Orientis, who was 1425. as it were the Captain of the Emperours Guard Notitia ntrithere were faith Pancirollus in His Court or Tribu- ufg; Imperis. nal one hundred Advocates allowed qui Clarissimi cap. 7.5'. & spectabilis titulo gaudebant, who enjoyed the Title of Noble and Illustrious, and had great Immu-

nities as from Publike works, &c.

The Emperours Gratian, (z) Valentinian and z Cuj cine Theodofius about the year of Christ 380 Ordained Comment. ad that the Earls and Masters of Requests should be 1.10. Cod. exempted from all other Publike charges (a) and Justin. 1425. upon Complaints, that in their Progress, their Comment. Servants received or took too much of the People, expositio ad did Ordain that when the Emperours went in Pro- Novel tis.63 gress & sacros vultus inhiantibus forte populis inferentes, should bless the people with their Presence, their Servants and Attendants, ne quid accipiant Immodicum, should not be unreasonable or Immoderate in it, the right use of which Ancient Custome or manner of the Oblations or gratifications of Subjects Inhabiting in any great Town or City, when our Kings of England passed by or thorough them, being probably derived or come unto us from this or the like Laudable Observances of Rights and Dues to Majesty, in return of Gratitudes to their Prince, His Followers or Attendants for procuring or putting him in minde to come that way, and give

y Parcirol in

give them the well-come opportunity of receiving new Graces or Favours or making acknowledgements for many formerly bestowed upon them

by him or his Progenitors.

By a Rescript or Constitution of the Emperc Cujacius ad ours (c) Theodosius and Valentinianus about the 1 12. Cod. year of our Lord 386 aterna lege, as they there Justin. tit.5. term it, by a Law for ever or unalterable Omnes cubicularii, All the Chamberlains or Bed-chambermen, Except some of greater Eminencie therein mentioned, were to be freed from Pourveyance and Cart-taking & a fordidis muneribus from all Publike and Inferior Offices not concerning the Immediate Service of the Prince and their Houses in the City from the Harbingers, upon great Penalties unto fuch as should molest them therein; and the reason thereof is therein given ne sordidis astricti muneribus decus ministerii quod militando videbantur adepti otii tempore & quietis amittant, to the end that the Dignity and quality of their Places which they obtained by their Services should not be lost in the times of rest and quiet, and, (d) Inter Cud Lib. I. C. Prab.Tyr. & biculares amongst those which attended the Royal-

Prab.Tyr.& l. 3. inf. de Castrens.

chambers, sunt qui sacra vesti deputati sunt those which belong to the Royal Robes & primicerii sacri Cubiculi id est qui primum locum gradumg; obtinent inter Cubicularios and the Primicerii or Chief of the Bed-chamber, (probably the Gentlemen of the Bed-chamber) were comprehended a-

e Cujacius in mongst them.

Comment. ad The Emperour Leo (e) about the year of our 112. Cod.

Justin. 1557. Lord 460 in a Rescript Johanni Comiti & Magi-

ftro Officiorum the Great Master of His Houshold. ordained that Cubicularios tam facri Cubiculi sui quam venerabilis Augusta quos utrosq; certum est obsequiis occupatos & Aula penetraliis inharentes diversa Judicia obire non posse ab observatione aliorum Tribunalium liberati essent, their Chamberlains or Bed-chamber-men, as also those of the Empress or Imployed in any of their Services and the affairs of the Court who could not attend divers Tribunals should be exempted from the Obedience of them ut in sublimitatis solummodo tue Judicio propositas adversus se excipiunt actiones to the end that they might upon occasion be only fummoned to his Honourable Tribunal: and the like Priviledge faith Cuiacius was thereby also allowed unto those, qui sacra vesti deputati fuerunt, which belonged to the Royal Wardrobe.

The Emperour Zeno (f) about the year of Conjacina our Lord 480 Decreed that the Senatours or Comment and other Honourable Persons should not be obliged 1.10. Cod. to give Bail to any Action, and illustre habent privilegium ut de eorum Criminibus nemo cognoscat inconsulto Principe. That the Nobility should not be tryed in any Actions Criminal without the Licence of the Prince first obtained (as is now done in England by the Kings especial Commission granted to a Lord or one of the Nobility to be as a Lord High-steward for such a Tryal or Purpose.)

And a Servant to another once entertained in the Emperours Service, being otherwise restrained

became

became instantly a Freeman and might make his last Will and Testament, and the reason given (h) quod hoc privilegium videatur principale esse h Cujac us in Comment. ad proprium Majestatis ut non Famulorum sicut pri-1.b.13.Cod. vata Conditionis homines sed liberorum honestis uta-Tuftin. tit. 5. tur obsequiis periniquum est eos duntaxat pati fortune deterioris incommoda, that it was a Principle or Property of Majesty, that the Emperours Servants should be in a better Condition then the Servants of Private-men, and it would be unjust that his Servants should be in as bad a Condition as those of the Common-people.

The Servants of the Emperours (i) house did abi Senat. vel enjoy a Priviledge, ut à solo principe vel ab eo Clariff. Macui is per sacros Apices injunxisset judicabantur, thens de futhat they should be Judged by the Prince himself

diciis disput. or one Authorized by His Commission. 4.num.36.6

i L. fin. c.

mandatis

G- 163.

Principum cap. 5. 162.

k Cujacius

1ib. 12. God.

3. tit. 16.

By a Law or Rescript of the aforesaid Emperour Vizzanius de (k) Zeno it was Ordained that ne ad diver sa tracti viri devoti silentiarii judicia, sacris abstrahi videantur obsequiis eos qui quemlibet devotissimorum silentiariorum Schole (Company or Regiment) Civiliter vel etiam Criminaliter pulsare maluerint, minime eum Commont. ad ex cujuslibet alterius judicio nist ex judicio tantummodo viri Excellentissimi Magistri Officiorum con-Tuftin. Tom. veniri, to the end none of the Emperours guards in the Palace and at the Court Gates (then called Silentiarii probably from their care and watchfulness) should be drawn or hindred from their Duty and Services, that those which had any Action or Cause of Complaint against them either Civilly or Criminally should not compel

them

them to come before any Judge whatfoever, but the Lord Steward, or Chamberlain of the Emperor's Houshold.

By the Salieque Laws, or of the Francks the An- 1 Confficuticestors of our Neighbors the French, who then (though now they find it not to be fo) thought themselves to (1) be as free as their name signified 1 de maniere made by Pharamond their first King toto catu populi, Tom 3. by the good liking of all that people assembled at et ultimo, Et Saltzburgh in Franconia in Germany in the year of Lindinbrogiour Redeemer 424. Qui in Juffione Regis fuerit oc- min Lege cupatus, he which was in the Kings Service by his Command (and so are all the Kings Servants ra- ne ab Imp. tionally intended to be ) manniri non potest, was Frederic. not to be cited or summoned to appear in any Court 1 & 2. Et of Justice, which other men were not to disobey Lindenbrogi: under very great pecuniary Mulcs, and was a win Prole-Constitution so acceptable to the people as Char-gomen. lemain long after in his Confirmation of that, and the Laws of the Ribuarians and some figoth. lib. 20. other Nations declares them to be non ex sua ad- tit de testibus inventione sed Communi Consilio et prout cunctis pla- et testimonis cuit prudentioribus Regni, not of his own Invention 4 Spelman. or framing but by Common affent or good liking gliffa : n voof the most prudent and wise men of his King- et Con. to. 2. dome.

By the Laws of the Wifigoths, (from whence the Roderic San-Spaniards do so boast to have been descended, as tim part. t. when they would fignifie one most nobly descen- Hist. Hispa. ded, they do usually say he is Ne de los Godos, he is Casp Bare. the Son of a Goth) where it was expresly provided trade inop. that the Testimony (m) of Servants should not be n. 41.

ones Pharamurdi in Goldaftus tit. Salicatis 1. Conflitutio-

1045. deb. cap. : C. King Ina who Raigned here over the West

allowed in Criminal Matters there was an excep-

cion for the better fort of the Kings Servants.

Saxons about the year of our Redeemer 712 amongst his Laws Suasu Hedda et Erkinwaldi Episcoporum suorum,omnium Senatorum et natu majorum, Sapientum populi sui in magna servorum dei frequentia, by the advice of Hedda and Erkenwald his Bishops, all his Senators, Elders, and wife men of his people and Commonalty attended by many of the Clergy, did ordain several degrees of Mul& or punishment, for breach of peace in Towns according to the qualities of the owners or Lords thereof, videlicet in oppido Regis vel Episcopi pacis violata pana 120 solidop L. L. Ine rum in (n) oppido Senatoris feu Baldomannes rupte pacis 80 folidorum in oppido Cyninges Thegnes feu ministri Regis 60 solidorum, et in oppido custodis pagant cujuscunque predia possidentis pacis tributa multa 35 solidorum censeatur, that is to say, In every Town of the King or a Bishop for breach of the peace 120 shillings, in the Town of a Senator or Alderman 80 shillings, in a Town of a Servant of the Kings 60 shillings, and in the Town of the Bayliffe or Reeve of any other man having Lands 35 Shillings. Charles the great, or Charlemain Emperor of

the West, and King of France, who began his raign in

the year 768 and after him the Emperor Lodovicus,

by his goodness and Piery sirnamed Pins, or the

Godly, (o) considering that in viros animosos plus

honoris posse quam opum remunerationem, that to

men of Courage and Spirit, Honor was more

O Fobennis Tilli Cem. de rebus Gallicis lib. 2. 183. tit. de Officis domesticu Re fum.

cap. 46.

in

in esteem then Riches, edicto mandaverunt ut ipsis in tota ditione sua honor haberetur, did by their Edicts which in those more obedient times when Subjects were not fo Critical (as too many of us now are) in their Princes Commands, by a Torture of farre fetched or Irrational Interpretations put upon their just Authority in order to the Weal-Publick) provide that in all their Dominions an Honour and respect should be given to their Dome-

flicks or Servants.

And therefore Antiquity and the Learned Bignowins were not guilty of any Error when they adjudged that Dignitas Domestici, the Dignity of the Kings Houshold Servants, fuit non contemnesda was not to be contemped, but was greatly honoured under the Raigns of the first and second Kings of France, and about the Raign of Clodoveus or Lodovicus the 12th. King of the first Race of the Kings of France, who Raigned about the year of (p) our Lord and Savions 648. Inter pra- p Bignonii cipuos Regni ministros sape enumerantur Comites Con- nota ad veter filiarii Domestici et Majores Domus &c. Amongst formul 514. the principal of whom were reckoned the Lord Stew- et L L. ard, Earls, Counsellors of Estate, Chancellor, and Ripnar rit. Chamberlane, the most Honourable and great men of the Kingdome, who did sometimes in the Court attend the King, in the hearing and determining of Causes, and were with those great Officers of 9 Hinckthe Houshold accounted to be de Honestate palatii seu marus Ep. 3. Specialiter ornamento (q) Regali, a part of the Ho- cap. 22. Bignor of the Kings Palace or Court, and an Orna- 16. 1. Marment to the Royal Dignity, and the Domesticks, cu f formul-

and Servants of that great and vertuous Charlemain had that respect given unto them which a just confideration of the Honor of their Soveraign, and concernment of the Weal-publique in his business or affairs had procured for them as Solebant Subditi (r) non modo resipere missos et legatos Principis Comites Duces et etiam ministros verum et viaticum eis pro unius cujusque dignitate prastare, the people did use not only to receive the Kings, or Princes, Earls, Dukes, and their Attendants but to give them Entertainment according to their feveral degrees or qualities, it having been ordained (s) by him ut de missis suis vel de ceteris propter utilitatem su-

s Capit. Car. mar. I. in li. 3. cap. 39.

r Bignonii

culfuns

446.

note in Mar-

am Iter agentibus nullus mansionem eis contradicere prasumat, that no man should presume to deny lodging and entertainment unto any imployed in his fervice.

t Fædus A. tbran in Lam erts Saxon Laws 64. 36.

King Afred or Alwed (t) who began his Raign Inredict Gu here about the year of our Lord 870 and had refident in his house the Sonns of many of his Nobility which did arrend him, did in that time of the more incult and fierce behaviour of the old English and Saxons and their Neighborhood with their Enemies, the usurping Danes take care in the League or peace which he was constrained to make with King Guthrun the Dane, to provide that in case of a Minister Regis mensatus as the Verfion or Translation renders it, any Servant of the Kings accused for Homicide, Et id Turis in omni lite, and the same Law to be in every other Action or Suit, there should be a Jury of 12 of the Kings Servants; or if the party grieved should be the

the Servant of another King, non nihil inferior, not much inferior to the Kings, probably intended of King Guthruns, it should be tryed by undecim fui equales unumque Ministrum Regium by eleven of his Peers or Equals, and one of the Kings Servants added unto them.

And it was then accompted such an honor to serve the King as our Learned selden (u) informs u Selden tit. us, he that that had a House with a Bell, a Porters Honor. 621. Lodge, and was fit to be sent on his Princes Message, or had a distinct Office in the Kings Court, was accompted (in those early daies) as a Thai-

nus or Nobilis, a person of Honor.

King Edward (w) the Confessor whose Laws the W L. E. Edvanquished English after the Conquest took to be wardi Confo much a bleffing as they hid them for preserva- fessoris ca. tion under the high Altar at Westminster, and by the importunity of their prayers and tears, procured King william the Conqueror to confirm and restore them, did ordain that the Earls and Barons, Et omnes qui habuerint sacham et socam, Theam et Infangthiefe etiam milites snos et proprios servientes scilicet dapiferos pincernas Camerarios pistores et Cocos Sub suo friburgo habeant, et si cui foris facerent et Clamor vicinorum de eis assurgeret ipsi tenerent eos rectitudini in Curia sua, And all those who had Courts Leete, or Baron amongst their Tenants, a priviledge granted by the King to have a Jurisdiction over their Tenants, and to fine or Amerce such as failed to make good their Actions, try and punish Theeves, taken in their Mannors, or Liberties, to have Villains and Bond-men and a propriety in their Villains -

Villains, Lands, or Goods, and to have subject to their Mannors those that held of them by Knight-Service, or were to attend them in the Warrs, and their Domestique Servants, as Sewers, Butlers, Chamberlains, Bakers, and Cooks should upon any wrong done to their Neighbors, or Complaint made of them, see right to be done unto them in their Courts, and certainly he that gave them those Liberties to hear and determine Complaints against any of their Menials, and Servants cannot rationally be supposed to be willing or intend to abridge himfelf of the like.

x L.L Gulielmi Con-

William the Conqueror in his Law, entituled de hominum Regis privilegio of the (x) priviledge belonging to his Tenants, ordained, That fi qui quest. ca. 2. male fecerint hominibus illius Balliva et de boc sit attinctus per Justitiam Regis (which for a great part thereof was then administred in his House or Palace) foris factura sit dupla illius quam alius quispiam foris fecerit. That if any one should do wrong unto them and be thereof Convict by the Kings Justice, the forseiture of the Offender should be double to what should be paid upon the like offence unto any other, who being afterwards known by the name of Tenants in antient Demeasne were so exempt from being retorned as Jury men ei-

y Mich. 26. ther at Affizes or Seffions, (y) as where they were to E.I. in Ban- retorned in the 26 year of the Raign of King Edco Ebor. Rot. ward the first, they did recover every man for-168. ty shillings damage against the Baylisse that retorned them.

Et Domus (2) Regis, and the House of the King z L. L. Henfaith King Heary the first in his Laws, is where rici primi he is Resident Cujuscunque feudum vel Mansio sit, ca. 80. whose ever the Land or the House be, and that Et in libro wife King who for his wildome had the Character rigro de neceor name of Beauclerk as an Affix to his Royal Title, did not then take it to be derogatory to the beloved Laws of Edward the Confessor or his grand (auro recepdesign of pleasing a lately discontented and subdued to Scaccarii people or fetling the English Crown unjustly de- fel. 27. cap. tained from his elder Brother Robert upon himself 25 et Sir and his posterity, to allow the Exchequer Privi- Henry Spelledges quod de Scaccario residentes, Clerici et om- in voce Banes alii ministri ibidem ministrantes sive enim de Clero rones Scoccafint five Regia Curia affident ex mandato ad alias quasti- vii. bet causas extra scaccarium sub quibuscunque Judicibus non evocenter. That the Officers of the Exchequer (which was then kept in the Kings House or Palace, and many of them and the Clerks thereof as Sir Henry Spelman faith his menial and domestick Servants) Clerks and all other the Ministers there whether belonging to the Clergy or the Kings Court or which do fit there by his Command, shall not be cited or compelled to appear for any causes whatfoever out of the Exchequer, or before any Judges or Judge, Etquod iidem de Communibus Affifes fect. Comitat. hundred. et Cur. quibuscunque tam de et pro dominiis suis, quam de et pro feodis suis Ac etiam de Murdris scutagiis vigiliis et Danegeld.

And that they should be freed and exempted from common Affizes, suit of County Courts, hundred Courts, or any Courts what soever as well for

fariss obfer-

Vantius Scac-

carii in The-

man gleffar

or concerning their Demesn Lands, as for their Fees. or Lands which they held of others, (which would otherwise after two years have made a forseiture, and could not have been dispensed withal) Murders, Escuage, Warch and ward, and Danegeld (publique Taxes which were not but by special favour to have been acquitted) Et | quod Barones et qui ad Scaccarium resident de quibuscunque provision. seu provisoribus et aliis solutionibus nomine consuctudinis pro quibuscunque victual. sue domus in quibuscunque urbibus Castellis et locis Maritimis empt. Ac de solutione Theolonia five Toluet liberi et quieti effe debent, and that the Barons and those which reside in the Exchequer should not be charged with the payment of Toll in any City or place, Et qued non debent implacitari alibi quam in Scaccario quamdin idem. Scaccarium fuerit apertum, and that they should not be impleaded any where but in the Exchequer, when it shall be open (which is not only all the Term times, but eight daies before cvery Term.)

Si vero judex sub quo litigant sine sit Ecclesiasticus sive forensis legis bujus ignarus ab jam dicta
die convocationis ad Scaccarium citaveriti quemlibet
eorum et absentem forte per sententiam possessione
sua vel quonius Jure spolaverit authoritate principis et ratione sessionis revocabitur sin eum statum
causa ipsius in quo erat ante citationem. But is sthe
Judge whether Ecclesiastical or of the Common
Law being ignorant of the opening of the Exchequer should cite any of them, and in their
absence give sentence against him and take away
from

from any of them any of their Rights or Possessions, by vertue of the Kings Authority and their fitting the Cause (or sentence) shall be forthwith revoked and reduced into the State it was before the Citation. And were so greatly favoured and taken care of as figuilibet etiam magnus in regno in confulto animi calore convicies lascesserit, If any great man of the Kingdome should rathly or in anger revile any of them, he was to pay a fine for it; or if any other should reproach or doe them any wrong they should be punished, and when that King had been ill advised and perswaded to charge the Lands of the Barons of the Exchequer with the payment of Taxes in regard that they, as was by some envious persons then alleag'd, did receive Salaries and Wages or Liveries or diet at the Court for their fitting, and that some of them, pro officio suo fundos habent et fructus eorum hinc ergo gravis jactura fisco provenit, having Lands and Revenues given them also for it which was a great loss to the Kings Treasury or Exchequer, But the King afterward experimenting that evil Counfel, and growing weary of it, et nil ducens facturam modici aris respects magni honoris, and not valuing the loss of a little mony, so much as the loss of a great Honour, ordained that Jure perpetuo, by a constant Law and decree they should as formerly be free from Taxes and in his Laws for the good of the Kingdome declaring his Kingly Rights and Prerogative, which he felus et super omnes homines, habet in terra sua as King of England had and was to enjoy and above all men in

his Kingdome commodo pacis et securitatis institutione retenta, reserving a sit provision for the publique peace and security did amongst many of his Royal Prerogatives mention de famulis suis ubicunque occisis vel Injuriatis the punishment of such as any where should slay or injure any of his Houshold Servants in any place whatsoever: (a) Et qui in Domo vel farici primi ea. milia regis pugnabit, such as should fight in the

Kings House.

And limiting the extent of the Jurisdiction of the Marshall of his Houshold, declared it in these words, nam longe debet esse pax Regis a porta sua ubi residens erit, the peace of the King ought to extend a great way from the gate (of his House) where he shall be resident (not much unlike that of the 12 miles circuit of the Verge now and for many ages past allowed) and gave the reason of it, multis sane(b) respectus esse debet ac multa diligentia ne quis pacem Regis infringat maxime in ejus vicinia, for that there ought to be a more than ordinary respect had thereunto, and much diligence used that none should break the Kings peace, more especially so near his House, which must of neceifity and by all the rules of Reason and Interpretation of Laws, and the meaning of the Law-giver be only understood to referre unto the peace and quiet of his own House and Servants, and not un-

to the Kings care of the publique and universal peace of the Kingdome which was not be streightned or pend up in so narrow a room or compass, when as many of his other Laws did at the same time provide for the universal peace and this

b L L. Henrici primi ca. 16.

only

only aimed at the particular peace and tranquil-

lity of himself and his Family.

Nor can't appear to have been any intention of that forefighted and confiderate Prince, that any Sheriffes or Bayliffs should upon all occasions, false or malitious or trivial suggestions presume to Arrest and hale from his Palace or Service any of the necessary Attendants upon his Person Majesty and Honour, or be the fawcy and irreverent Infringers of their peace which by that Law Intituled, De pace Curia Regis, the peace of the Kings Court or Palace he took so great a care to preferve.

At the Parliament of Clarindon holden by King Henry the Second in Anno Dom. 1164. When that Prince's troublesome Raign was afflicted with the Rebellion of his Sons, and Domineering of a Powerful Clergy, backt by the Papal power and Infolency, it was not thought to be either unreafonable, or illegal, when Excommunications which the lofty Clergy of those times were not willing to have clipped or limited, and the Thunderbolts fear or fury thereof, did farre exceed any effect or consequence of an utlary, to ordain That, (c) Nec aliquis Dominicorum Ministrorum Regis excommunicetur, nec terra alicujus eorum sub c Chronic Interdicto ponantur nifi prius Dominus Rex, fi in Gervafii Doterra fuerit, Conveniatur, That none of the Kings 1386 et Servants or Officers be excommunicated, or their 1387. Lands interdicted, untill the King if he be in the Kingdome be first Attended. And the reason of this Law, was faith Sir Edward Cook for that the Tenures

d Sir Ed. ward Coke 2 part inftitutes 691.

Tenures by grand Serjeanty, and Knights(d) service in Capite were for the Honour and defence of the Realm; and concerning those that served the King in his Houthold, their continual Service and atten-

dance of the King was necessary.

And Glanvil who was Lord Chief Justice of England, and wrote in the Raign of King Henry the fecond, or of King Richard the first, of the antient Laws and Customs of England, if that Book as some have thought were not written rather in his name then by him, howfeever it is ancient and allowed both here and in Scotland to be very Authentick, faith (e) that Per servitium Domini Relib. 1. 6. 27 gis rationabiliter essoniare potest, et cum in Curia probatur hoc essonium et admittitur, remanebit loquela fine die donec constiterit eum ab illo servitio domini Regis rediiffe.

e Glanvil

f Spelman G'offar.in voce Effoin.

Unde hi qui assique sunt in servitio (f) Domini Regis, Cui necessitates omnes forenses cedunt, (to which all otherbusinesses or occasions saith the Learned Spelman in his gloss upon Esfoines are to give place) ut Servi-

entes ipfius hoc Essonio non gandebunt.

Ergo circa eorum personas observabitur solitus cursus Curia et Juris ordo. That a Defendant or Tenant being in the service of the King may rationally be esfouned or for that time be excused, and when the Effoyne or excuse is proved in Court and admitted, the Action or pleashall be without day, and suspended untill it shall happen that he be retorned out of the Kings Service, but those that be in the Kings daily Service as his ordinary Servants are not to, be allowed fuch an Efloyne or excuse, therefore as to their persons the accustomed course of the Court and order of Law is to be observed, but doth not declare what that solitus Cursus Curia et juris orde, that accustomed course and order of Law in case of the Kings Servants in ordinary then was. Or whether their priviledge was not so great and notorious as not to need any Essoine.

Yet as the Law then was, saith, that where sometimes both the Plaintiffe and the Defendant did not appear, but made default, (g) tune in Domini Re- g Ibidem ca. gis voluntate velejus Justitiariorum, erit si voluerint, 33. versu utrumque contemptum Curie vel fassum clamorem prosequi, then it shall be in the good pleasure of the King or his Judges if they will prose-

cute either against the Desendant sor his Contempt, or against the Plantisse for his not Prosecution.

By which again the King was at his liberty to protect or priviledge his Servant in ordinary if the Law had not allowed them any such priviledge, as well as to grant his Writ directed to the Judges ad (h) marrantizandum to allow or receive an Essoine h Ibid cap 8. for one that was in servitio Regio in his Service, recited by Glanvil with an Idea vobio mando quod pro absentia sua illius diei non ponatis in defaltam, nec in aliquo sit perdens, therefore I command (our Kings not then in their mandates, writs, or Patents speaking in the plural number, as we and us &c.) You that you enter not a default against the Defendant or Tenant for his absence, or not appearing at the day appointed, and that he be not damnified thereby.

And in that Kings Raign and the beginning of the Raign of King Richard the first, whilst Chief Ju-

2 stice

stice Glanvil attending his Court and Justice his Warrs in the Holy Land, died at Acon, and in all those foregoing times and ages it was not probable that any Inroads should be made upon that antient just and rational priviledge of the Kings Domestiques or other Servants in ordinary, for that some of the Stewards and great Officers of the Kings most honourable Houshold, who had under their several Kings the protection as well as Government of the Servants in ordinary of the Royal Family, as Prince Henry the eldest Son of King Henry the second and William Longchampe in the first year of the Raign of King Richard the first, Lord Chancellour of England, were whilst they held their feveral other places in the Kings Courts, succesfively Lord Chief Justices of England, and attended in the Kings Court.

i Glanvil 1. And it (i) appeareth by Glanvil, that Actions 10 cap. I et or Summons, or Attachments of Debt, and other process were then not infrequently directed to the Sheriffe of the County where the Defendant dwelt, made retornable, coram me, i.e. Domino Rege vel Justitis meis, i.e. Justitis suis before the King or k Idem lib.6. his Justices, in the abstract (k) apud Westmonasterium at cap. 8. Westminster, i.e. The Kings House or Palace, the

Court of Justice therein kept being called Capi1 Idem lib. 2. talis Curia Domini Regis, (1) the Kings chief Court
ca. 2. 14. et where those Justices or Judges then sate, and where
the great Assize or Writs of Assize in pleas of Land
happily succeeding in the place of the turbulent
fierce and over-powring way of duels, or waging

10

of battels for the determination of pretended Rights were tryed, Juries impanelled, and a Fine passed and Recorded before the Bishops of Ely and Norwich, and (m) Ralph de Glanvile our Learned m Idem lib. Author, Justitiis Domini Regis et aliis sidelibus et 8.cap. 3 et 5. familiaribus Domini Regis ibi tunc presentibus, the Idem lib 12. Kings Justices and other of his Subjects and cap. 22, lib. Houshold, Affizes of novel desseifin and prohibiti- 13.cap. 33.

ons to Ecclefialtical Courts awarded.

And was so unlikely to permit any Breach of his Servants just priviledges as he did about the 24th. year of his Raign, not only confirm all his Exchequer Servants, Dignities and priviledges ufed and allowed in the Raign of King Henry the first his Grandfather, but although Warrs and many great troubles affaulted him, did when he laid an Escuage of a Mark upon every Knights Fee whereby to pay his hired Soldiers not at all charge his Exchequer Servants, for that as the black Book of Exchequer that antient Remembrancer of the Exchequer priviledges, informs us Mavult enim(n) Princeps stipendiarios quam Domesticos n In libro Bellicis apponere casibus, for the King had rather ex- Nigro Scacpose his hired men of Warre to the nonveniences carii cap. 25. thereof, then his Domestique or Houshold Servants, and being as willing as his Grandfather to free them from being cited or troubled before his delegated or Commissionated Courts of Justice or Tribunals, would in all probability be more unwilling that those which more neerly and constantly attended upon his person, health or safety should by any fuits of Law be as to their persons or estates

states molested or diverted from it, nor could there be howfoever any danger of arresting the Kings Servants in ordinary without leave or Licence first obtained in the after-Raigns of King Richard the first and King John when Hubert Walter Archbishop of (a) Canterbury and Chancellor of England in the 6th. year of the Raign of King John was likewise Lord Chief Justice of England.

O Dugdales origines Juid.

And the now chief Courts of the Kingdome as the Chancery, Kings-Bench, Common-Pleas, and Exchequer, were radically and effentially in the King; and in the distribution of Justice of the faid Kings and their Royal Predecessors resided in their Council and great Officers in their Courts

attending upon their Persons.

For many of the Suits and Actions at the Common Law, and even those of the Court of p Magn.Ch. Common (p) Pleas untill the ninth year of the 9.H.3.ca.11 Reign of King Henry the third when it was by Act of Parliament forbidden to follow the Kings Court, but to be held in loco certo a place certain, in regard that the King and his Court were unwilling any more to be troubled with the Common Pleas, or Actions betwixt private persons which were not the Kings Servants were there profecuted.

And until kthose times it cannot be less then a great probability that all the Trades-mens debts which were demanded of Courtiers and the Kings Servants were without Arrests or Imprisonments to be profecuted and determined in the Court before the Steward and the Chamberlain of the Kings House; and that the King who was so wil-

was so willing to ease his Subjects in their Common Pleas, or Actions, by freeing them from fo chargeable an attendance which the profecution of them would commonly if not necessarily require, did not thereby intend that they should have a Liberty without leave, or Licence first obtained to moleft any of his Servants in ordinary in their Duty or Attendance upon his Royal per-Ion and Affairs by profecuting, Arrefting, imprifoning, or compelling to appear before other Judges, or Tribunals, any of his Servants in ordinary.

Who in those times may well be thought to enjoy a freedom from Arrests or Imprisonment of their Bodies, untill leave or Licence first obtained. when Hugo de Patisbul Treasurer unto King Henry the third in the nineteenth year of his Raign, Philip Lovel in the 34th. (g) year of the Raign of that King, and John Manfel Keeper of the great Seal gelmen of England, in the 40th, year of that Kings Raign Catalogo Cawere, whilst they held their several other places, pital Juffie. successively Lord Chief Justices of England.

When the Court of Chancery being in the ablence of Parliaments next under our Kings the Supreme Court for the order and distribution of Juflice, the Court of the Kings Beach appointed to hear and determine Criminal matters, Actions of Trespass and Pleas of the Crown, and the Court of Exchequer, matters and Causes touching the King's Revenue, were so much after the 9th. year of the Raign of King Henry the third, and the difpenfing with the Court of Common Pleas from following the person of our Kings to their several Houles

Anglia 835.

Houses or Palaces, or as their Affairs invited them: to be sometimes Itinerant, or resident in several other parts of the Kingdom did follow the King and were kept in their Houses, or Palaces, notwithstanding that when like the Sun in his Circuit distributing their Rayes and Comforts to all the parts of the Kingdome by turns, they were according to their occasion of busines sometimes at York or Carlile, in the North; and at other times for their pleasures or divertisements kept their Courts or festivals at Glocester or Nottingham, and their Parliaments sometimes at Marlebridge in Wiltsbire, or Ruthland in

Wales, or at Glocester or Lipcoln.

h Dugda'es origines THriticiales ca. 33. 93.

For it may be evidenced by the Retorn or days given in Writs, and antient Fines levied before the Justices of the (h) Court of Common Pleas at westminster after the allowance or favour given to that Court not to be ambulatory, and to the people not to be at so great trouble or charges, as would be required to follow the King and his Court in a throng of Followers and other bufiness, for the obtaining of Justice in their suits or Actions as well finall or often emerging, as great and seldome happening, (the days of old also affirming it) that the Kings Palace at westminster in the great Hall, where the Court of Common Pleas hath ever fince dwelt, some places thereunto adjoyning; retaining at this day the Name of the Old Pa-

i Stoms Sur- lace, did not cease to be the Palace or Mansion ver of Lond. House of our Kings(i) of England, untill that King Henry the 8th.by the fall of the pompous Cardinal and Westm. 840,887 & woolfey, the building of St. Jame's House, and inclosing 888.

the now Park thereof with a brick wall-made white-Hall to be his House, or Palace, but kept the name as well as business of the Palace or Mansion House of our Kings of England; And the Courts of Chancery, King's Bench and Exchequer did after the fixation of the Common Pleas or Actions of the people to a certain place in the Kings Palace at Westminster, being then his more fettled and constant habitation' and Residence for his not a few Servants and Followers, fo much follow the King and his Court and were kept in the Kings House or palace as in old time King Solomon in his Stately Porch of (k) Judgment built in his k 1 Reg. 7.7. House did judge and hear Causes, and as the 1 Telement Kings of (1) France did long ago in their Palaces, Tilius Comand as long before the Romans had their Senate or ment. de re-Parliament House, their Forum or place for their but Gall. Courts of Justice near adjoyning to their Kings m Alexan-Palaces.

As our Bracton in the latter (n) end of the andre Genial Raign of King Henry the third, called the Court of dierum lib. 1. King's Bench, as Sir Edward Coke faith Aulam Regiam the Kings Hall, because the Judges of that Court did sir in the Kings Hall, and the Placita Au- part Infti. le Actions or Pleas of the Kings House or Hall were determined before the Sreward of the Kings House.

And that King, who began his Raign in the year 1216, labouring under great difficulties, the power of many of his unruly Barons and very great necessities as well of mony as friends had (notwithstanding the many Diminutions endeavoured K 2

der ab Alex-

n Cokes 4th.

ons upon the Rights and Legal Priviledges of his Domestiques or House-hold Servants; but had al-

lowed him that Reverence and respect which by the Civil Law) that universal Guide or Director of Reason and Justice and (next to the Laws Eternal, and its Deputy or Law of nature written in the heart of Mankind) the Mother, Nurse or Parent, of a great part of that which is called our Common Law) is and ought to be due and payable to the persons and Courts of Princes, but enjoyed so much of it as (o) Bracton, who was a Learned Lawyer and afterwards a Judge, and as El'esmeer in some have believed a Chief Justice in the latter end of that Kings Raign, or the beginning of the or argument Raign of King Edward the first, his Son in his the post nati Book De legibus et Consuetudinibus Anglia, of the Laws and Customs of England, whilst he disputes where a Defendant excuseth his not appearing to an Action, when he is in Servitio Regis in the Kings Service, and whether being fummoned before he D Brallov 1. was in the Kings Service and might fend or (p) make 5 de Essais his Attorney, should be excused, is willing to cap. 2. 337 conclude in the negative, yet forbeares to do it de Exceptiewith a fed ita effet but so it would be, si quis posset factum Domini Regis Judicare et in omnibus

444 ca, 33. istis casibus magis erit spectanda voluntas Domini

Regis quam jus frictum cum servitium Domini Regis nulli debeat effe damnosum, et sieut non debet esse tenenti (when it seems the Action spoken of concerned plea of Land ) Damnosum, ita non debet effe Petenti injuriosum, if any were to be Judg

міbш 439.

cap. 31. et

· Lord

Chancellor

his Speech

concerning

of the Kings Actions, and that in all those Cases the will of the King was more to be regarded than the strictness of the Law when as the service of the King ought not to be grievous unto any: And as it ought not to be a grievance unto the Tenant, fo ought not the Plaintiffe to take it to be a wrong done unto him: And was of opinion that the folemnity and course of process may be sometimes shortned propter reverentiam persona vel privilegium contra quem illata fuit injuria vel contra nobiles personas, ut si Injuriatum sit Domino regi vel regina vel corum liberis fratribus fororibus, &c. For reverence or respect to the person or in regard of the priviledge due unto him unto whom the wrong is done as if it were done to noble Persons or some wrong done unto the King, the Queen, or their -Children, Brothers, Sifters, Oc.

And when he would not allow the priviledge or Essoine of being in the Kings Service unto a Sherisse or Constable who were the Kings Officers during the time of their imployments, was content to do it, ubi aliqua causa emergat necessaria ex inspinate ubi prasentia talis debet esse necessaria sicut iter Justitariorum vel incursus hostium vel hujusmodi, qua quidem Causa sufficientes sunt ad excusationem de servitio domini regis, where there was any emergent and expected Cause where their presence was necessary as to attend in the ster or Circuit of the Judges or upon an Invasion of Enemies or the like: which were causes sufficient of excuse by reason of the Kings Service, dum tamen ad quemtibet diem datum per Essoniatorem de servitio Do-

q Bratton tract.2 lib.5. de Esfoniis ca. 2.

· mini regis habeat Essoniatus warrantum suum per breve Domini Regis, so as at the day of Essoin that he or they were in the Kings Service the Kings writ (or protection) be produced to prove (q) it. Item excusatur quis si implacitatus fuerit in Curia Domini Regis vel vocatus ad Curiam Regis ob aliquam Causam in aliquibus Curiis inferioribus, likewife any one impleaded in the Kings Court, or called or fummoned to the Kings Court upon any Cause or occasion shall be excused in inferior Courts. Sed quid but what faith that Learned Judge dicendum erit de Curia Christianitatis cum magis obediendum sit Deo quam hominibus? Hot dico quod ad hunc differendum erit, et quod dominus Rex warrantizare poterit ob reverentiam qua principi debetur, shall be said if the Cause be depending in the Court Christian when God is more to be obeyed than men ? I say that in such a Case it is to be left unto God, and the King may warrant his fo doing in respect of the Reverence which is due to the Prince.

Being not much different from the Cares which some Forraign Princes did about that time hold fit to be taken of their Domestique Honors

and Servants.

t Constit. Sienserum in Lindenbrogio tit. 37.lib.t.

For by the Laws of the Sicilians (r) and Neapolitans made or confirmed by Frederick the Emperor about the year 1221 the Magister Justiciarum magna Curia, Chief Justice of the King's House or Court had the Cognizance or hearing of Causes, de questionibus nostrorum Curialium qui immediate nobis assistant de speciali conscientia nostra in curia commorantium, qui de Curia nostra sine speciali mandato nostro non possunt

possunt recedere, or questions concerning any of the Kings Courts who do immediately attend us, . and by our privity are residing in Court and can-

not depart without our special Licence.

Et observent (s) diligentissime Judices ut in occa- & Conflit. Sisione injuriarum Curialium personarum dignitatem sulorum in considerent, et justa personarum qualitatem corum qui- Linde abrogio bus fuerit facta injuria; ipsis autem facta injuria non ipsis duntaxat, sed etiam ad Regia dignitatis spectat offensam, The Judges are to take an especial care that in all accusations concerning any of the Kings Servants or Courtiers they take into confideration their worth, dignity, and quality, seeing that a wrong done unto them is an' injury or wrong done unto the Dignity of the Prince.

And when our (t) Bracton will not allow the Bracton tr. priviledge where it is ex voluntaria causa when the Essoniis ca. party that would excuse his absence was voluntarily absent and not in the Kings service, or will of his own accord without the Kings command go along with his Army; yet he cannot but fay that talibus non subvenit dominus nisi de gratia unto such the King would not be aiding unless he should be

otherwise gratiously pleased to do it.

By an Act of Parliament made (4) in the 52 year 11 Cook 4th. of the Raign of our King Henry the third, all Arch- Part institut. bishops, Bishops, Abbots, Priors, Earls, Barons and religious men and women (except that their appearance be specially required for some other Causes) w cap. 53. are excused from appearing at the Sheriffs Turn, 260. et cap. (Sir Edward Cook (w) extending it to the Courts 54.261, Lecte and view of Franck-pledge) which with the 263. Sheritts

lib 3. tit. 33.

Sheriffs Turns were instituted for the Conservation of the Kings peace, punishment of Nusances, and where all men within the Jurisdiction of it might be summoned to take the Oath of Allegiance.

x 3 Ed. 1.ca.

24.

By an Act of Parliament made(x) in the third year of the Raign of King Edward the first providing a remedy where an Officer of the Kings (which by common intendment were then understood to be the Sheriffs Escheators or Bayliffs of the King, not his menial Servants) doth diffeise any, It is in that. only case left to the Election of the Disseisee, or party diffeised whether that the King by office (ball cause it to be amended (which the parties grieved were more likely to choose when besides their just satisfaction they might be a means to punish or affright the Kings Officers so offending with the losse of their gainful, as well as not smally reputed Offices or places) at his complaint, or that he will sue at the Common Law by writ of novel diffeisin.

- And by another act of parliament made in the same year, enjoying fevere penalties against the Kings Purveyors not paying for what they take; and of fuch as take part of the Kings debts, or other rewards of the Kings Creditors to make payment of the same debts; and of such as take Horses and Carts more than need (a trick wherein Tacitus, y Tacitus in faith (y) the Roman Cart-takers whilst the Romans

cola.

31.

vita Agri- governed here were wont to abuse the old Britains) and take rewards to dismisse them: it was provided that if any of Court so do, he 2 3 E. I. cap. Shall be grievously punished by the (2) Marshalls, and

and if it be done out of the Court, or by one that is not of the Court, and be thereof attainted, he (hall pay treble damages, and Pall remain in the Kings prifon forty dayes: by which it is evident that the intention of that Act of Parliament was not to deliver any of the Purveyors, the Kings Servants in ordinary, to any other Tribunals than that of the Marshals

or other the Officers of his Houshold.

Britton who like the Emperor Justinians Tribonianus in compiling or putting together the pieces of the Civil Laws, did by Command of that wife and Valiant Prince King Edward the first in the fifth year of his Raign, write his book in the name of that King concerning divers Pleas, Process, and proceedings in the Kings Courts, faith in the Person of that King and French of those times, Countes et Barons Dedans nostre verge (the Kings Palace, or 12 miles round about) trovesnequedent estre destreint, that Earls Barons found within the virge should not be attached or distrained, as ordinary men which were Deb- a Britton tit. tors, (a) Et nos Serjeans (or Servants) de nostre ho- dette. stel soient avant summons pour dette que destreyntz et 69. sett 141. attaches par leur cors les uns pour reverence de lour prohibitis persones et les Autres pour reverence de nostre service, formita de of our House shall be summored for debt before Statut. Arthey be destreyned, or Attached by their bodies, the tie Cleri w.t. one in reverence and respect to their persons, and M.g. Charthe other in reverence to our Service.

By an Act of Parliament made by that prudent Part institutes Prince about that time entituled, Prohibitio formata of the Laws de Statuto Articuli (leri, where (b) a prohibition 600 Register was framed against certain matters which concern- 36. Britten

ta Coke 2.

ed 356.

ed the Clergy and the limitting of their Jurisdiction. It was declared, that, Proceese et magnates et alii de codem regno temporibus Regis predecessorum Regum Anglia seu Regis Authoritate alicujus non consucuerunt contra consucudinem illam super hujusmodi rebus (i. e.) matters Civil or Temporal, (except matters of Testaments or Matrimony,) in causat trahi vel compelli ad comparendum coram quocunque sudice Ecclesiastico, the Noble men and others of the Kingdome, in the times of the Kings Predecessors, or by Authority of any of the Kings, did not use contrary to the said custome in such cases to be compelled to appear before any Ecclesiastical Judg whatsoever.

c Mich. 18. E.1. Norf. Rot. 46.

In the 18th. year of his Raign, (c) in an Action brought at the Kings Suit, in Banco Regis, in the Kings Bench against Robert the Son of William de Glanville and Reginald the Clark of the faid William de Glanville for delivering at Norwich a panel and certain of the Kings Writs, which the Kings Coroner ought to have Brought, the said Reginald demurring for that Domine Rex motu proprio de hujusmodi Imiuriis privatis personis illatis sectam habere non debet ex quo aliena actio sibi competere non potest: unde petit Judicium. et si hoc non sufficiat, dicet alind. et si actio in hujusmodi casu Domino Regi posset competere, dicit quod hoc deberet effe per breve originale et non de judicio, unde petit Judicium, the King was not to bring an Action for injuries done to private perfons, and is not concerned in another mans suit, and demanded the judgment of the Court. And if that Plea will not be sufficient will plead somewhat elfe

elfe, And if fuch an Action did belong to the King it ought to have been by Writ Original, and not by a Writ Judicial, whereof he pray'd the Judgment of the Court. but Johannes de Bosco who followed for the King, dicit quod quelibet injuria ministris Regis licet minimis, illata vertitur in dedecus ipsius Regis; Et licet hujusmodi minister Justitiam afsegui de injur. sibi illat contempsit, tamen cum hujusmodi Injuria ministris Regis illata ipsi Regi fuit ostensa competit sibi actio ad amend. consequend. de contemptu pleaded that every wrong or injury done to the Kings Servants.though it be unto the least, is a disparagement to the King. And if fuch a Servant will not take care to profecute fuch an injury, yet when the King shall be informed thereof, he is concerned to punish the Contempt, and vouched a late President for it in a Case betwixt Robert of Benhale and Robert Baygnar and others in a Writ of wast, and prayed Judgment for the King.

In the same year John de Waleis (d) complaining a d Ryleys pla. gainst Bogo de Clare for that some of his Servants, Parliament. when he came to the House of the said Bogo in 18. E. 1, 22. London, and served him with a Citation in the name sett. 15.

of the Archbishop of Canterbury, enforced him to eat the Seal and Citation, and the said Bogo de Clare pleading that he ought not to answer, because it was not alledged that he was the doer thereof, nor that his Servants did it by his Command, nor were they named, it was in that Record and pleading adjudged, that although the Fact was committed by the Servants of the said Bogo, yet quia Dominus Rex pred. Transgressonem sic enormiter fac-

tam, ut dicitur, tum propter contemptum Sancta ecclefie tum propter contemptum ipsi domino Regi in presentia Sua, videlicet infra virgam et in Parliamento suo factum, propter malum exemplum temporibus futuris tum propter audaciam delinquendi sic de cetero aliis reprimendam permittere non vult impunitam, in regard that the King would not suffer so foul an offence not only in contempt of the Church and of the King in his presence, that is to say, within the virge and in time of Parliament, but for the boldness of the offence and the evilexample in time to come to pass unpunished, the said Bogo de Clare should answer the Fact at the Kings fuit for that the offence was committed infra portam suam et per manupastos et familiares [nos, within, the house of the said Bogo and by his Houshold Servants, some of whom being named the faid Bogo was commanded to bring them before the King and his Councel, to abide by what should be ordered and decreed against them.

e 28. E. 1. 6.

By the Statute or Act(e) of Parlimaent made in the 28th, year of that Kings Raign, the King and Parliament may be understood not to intend that the Kings Purveyors or Servants of that nature thould be tryed or punished for divers offences therein mentioned before other Tribunals than that of the great Officers of his Houshold, and therefore ordained that for those Offences they should only be tryed and punished by the Steward and Treasurer of the Kings Houshold, nor when by an Act of Parliament, made in the same year and Parliament, 28. E. ca. 3. of what matters the Steward and Marshall of the Kings Houshold should hold Plea, their Jurisdicti-

ons were confined to Trespasses only done within the Kings House, and of other Trespailes done within the Virge, and of Contracts and Covenants made by one of the House with another of the same House and in the same House, and none other where. And whereas before that time the Coroners of the Counties were not authorized to inquire of Felonies done within the Virge, but the Coroners of the Kings House which never continueth in one place, whereby the Felonies could not be put in exigent, nor Tryal had in due manner. It was ordained that in case of the death of men, it should be commanded to the Coroner of the County that he with the Coroners of the Kings House should do, as belongeth to his Office, and enroll it; and that the things which cannot be determined before the Steward of the Kings House, where the Felons cannot be Attached, or for other like cause should be remitted to the Common Law', the King and Parliament can be rightly supposed thereby to intend that the Kings Domestiques or Houshold Servants should for Controversies amongst themselves of the nature before recited be compelled to attend or be subject to any other Jurisdiction, when a Coroner of the Kings House was long before appointed to prevent it:and it appeareth by that Act of Parliament it felf, that the matters therein mentioned were not to be remitted to the Common Law, but where they could not be determined before the Steward of the Kings House. The care and provision of which Act of Parliament to keep the L 3 cognizance

cognisance of the Causes and Actions therein mentioned within the Jurisdiction of the Steward and Treasurer of the Kings House, did neither abrogate any of the former Rights and Liberties of the King or his Servants, nor by any reasonable construction or interpretation can be understood either to abolish and take them away, or to intend to give a liberty to Arrest without licence any of the Kiags

Servants in ordinary.

C. 4.

And (f) an Act of Parliament being made f 28. E. 1. in the same year, that Common Pleas or Actions should not be holden in the Exchequer (which was then kept in his Palace) did by a Writunder the great seal of England directed unto the Treasurer and Barons of the Exchequer, reciting that secundum legem et consuetudines Regni, according to the Law and customes of the Kingdom, Common Pleas ought not there to be (g) pleaded, doth specially except nift placita illa nos vel aliquem ministrorum nostrorum scaccaris specialiter tangant, such Actions as did not especially concern him or any of his Ministers or Servants belonging unto his Exchequer, and commanded an Action of debt for five pounds brought against one of the Exchequer to be superseded and no further prosecuted, and that the said Treasurer and Barons should on the Kings behalf declare to the Plaintiffe, quod breve nostrum de debito sibi impetret, si sibi viderit expedire, that he should if he thought it expedient sue forth the Kings writ for the debt aforesaid, which can import no less then a license preceding the obtaining of it, and untill fuch Actions were to the large and

g Register 187. B.

and very great benefit of the Subjects in a cheap and ordinary course to be obtained which in the morning and infancy of our common and municipal Laws were wont to be petitioned for, and be not a little costly dilatory and troublesome, as they which have made use of a friend to the King or a Master of Requests, or Secretary of State may easily be perfwaded to believe, amounted to a greater trouble, delay, and expense of the Plaintiffs, than now they are put unto, to get leave of the Lord Chamberlain of the Kings House to Artest any of the Kings Servants: and that prudent Prince did certainly by that Act of Parliament touching the Exchequer not holding Common Pleas as little intend, as did his Father King Henry the third, by that Act that Common Pleas should not follow his Court, that his Servants in ordinary should without leave or licence first obteyned be constreyned to neglect their Service and attendance, and appear before other Tribunals.

For there is an antient Writ faith Sir Edward Coke, to be found in the Register of Writs called de non residentia Clerici Regis, of the non-residence of the Kings Clerk or Chaplain, or attending in some Office in the Chancery directed to (b) the Bishop of the Diocels in these words, Cum Clerici nostri ad h Cokes 2 par. faciend in beneficiis suis residentiam personalem (which institut. 624. was for the cure of Souls being the highest con- Artic. Cleri. cernment, and greater then that of appearing to an ca. 8. Action of debt or other Action) dum in nostris im Register. 58. morantur obsequin compelli aut alias super hoc molesta- F. N. B.44. ri seu inquietari non debeant, nosque ac progenitores no- G.

stri quondam Reges Anglia hujusmodi libertate et privilegio pro Clericis nostris a tempore quo non 'extat memoria semper hactenus usi sumus, vobis mandamus quod dilectum Clericum nostrum A parsonam Ecclesia de B.vestra dioces. qui in Cancellaria nostra nostris jugiter intendit obseguiis, ad personalem residentiam in beneficio suo predicto faciendam, dum in obseguiis nostris Immoretur mullatenus compellatis, et sequestrum (2 penalty upon non residents too much disused or neglected) fi quod in fructibus aut aliis bonis Ecclesia sua predicte ea occasione per vos aut westrum fuerit appositum, sine dilatione relaxari faciatis, whereas our Clerks ought not to be compelled to a personal refidence in their benifices nor molested therein, whilft they are implyed in our Affairs or attendance, and that we and our progenitors Kings of England from the time to which the memory of man doth not extend, have alwaies hitherto used and enjoyed that liberty and priviledge, we command you that you do no waies enforce A our well beloved Clark Parfon of the Church of B. in your Diocels to a perfonal residence therein, whilst he is imployed in our affairs in our Chancery. And that, if by reason thereof you have sequestred any of the profits or goods of his faid Church, you doe without delay discharge or release the same.

In the 33th. and 34th. (i) year of the aforefaid Mich.33. et Kings Raign William de Brewse a great and pow-34. E. I. coram Regero, erful Baron of England being indicted in the Kings Bench for using contumelious and reproachful words to Roger de Hengham one of the Judges (who are but as the Kings Ministers or special Servants

71.

in his dispensation and Administration of Juflice) for giving Judgment against him and he plea- k Coke 2 part ding to the (t) faid Indictment quod non intellexit in infitutes. ca. hoc Domino Regi ant Curia fue fe aliquem Contemptum 208 230. feeiste, that he did not understand that it was any contempt or Injury done by him to the King or Court, sed si videatur Domino Regi et ejus Confilio quod ipfe in hoc in aliquo deliquit, ipfe se inde totaliter submittie voluntati Domini Regis, dec. But if it should appear that he had therein offended he did wholly fubmit himself to the Kings good pleasure quibus pramiffes poftea coram domino Rege & ejus confitio visis et diligenter examinatis et plenarie intellectis, all which matters and premifes being afterwards considered, diligently examined, and fully understood, Quia manifeste patet tam pro hos quod prafatus Gulielmus post redditionem Judicii pradicti cantemptibiliter Barram ascendit & prefatum Rogerum Justic. Domini Regis de Judicio per ipsum pronunciat reprehendit, et postea eidem Roger. ennti, &c. Verbis acerbioribus et groffioribus insultavit ; for that it plainly appeared that the faid william after the faid Judgment given by the faid Roger, contemptuoufly came to the Bar, and did reprehend the faid Juffice for the Judgment aforefaid pronounced against him, and afterwards followed the faid Roger as he was going from the faid Court, and reviled him with groffe and bitter words. Que expresse redundabant tam in dedecus prædicti Justic. quam in Contempt. Cur. Dom. Regis et inobedientiam; Que quidem, viz. Contemptus et inobedientia tam ministris ipfins Domini Regis quam fibi ipfi aut Cur. sua facta

facta ipsi Regivalde sunt odiosa, which did expressy redound as well to the reproach of the faid Judge, as a disobedience to the King and a Contempt of his Court : which contempt and disobedience as well to the Ministers of the King as to himself or his Court are greatly displeasing. Et hoc expresse ap-

paruit.

Cum idem Dominus Rex filium suum primogeni. tum et Charissimum Edwardum Principem Wallia pro eo quod quadam verba grossa et acerba cuidam ministro suo dixerat ab hospitio suo ferè per dimidium Anni amovit, necipsum filium suum in conspectu suo venire permisit quousque dicto ministro de predictà transgresfione satisfecerat. And this saith the Record exprefly appeared, when the King did for almost half a year banish from his Court, and presence his dearly beloved Son, Edward Prince of Wales, for that he had given some foul words to one of his Ministers or Servants that attended him, which as

parts institutes 142. tit.mifprision.

I Cokes third Sir Edward Coke saith (1) was the Treasurer of England who was so much misused by the instigation of Pierce Gaveston, and would not suffer him to come in his fight untill he had given his faid servant or minister satisfaction. Et quia sicut honor et reverentia, que ministris ipsius Regis ratione Officii sui siant, ipsi Regi attribuuntur, sic dedecus ministris suis factum eidem domino Regi infertur, And in regard that any honor or reverence done to the Kings Ministers or Servants, are attributed or taken as done to the King, so any reproach done unto his Scrvants or Ministers, are such as done to the King himself. Et videatur quod pradictus Gulielmus in pramissis

missis tam ipsi Domino Regi et Curia sue quam prafat. Justic. suo contempt. fecit, Et dedecus manifestum. And that it was evident that the said william had behaved himself contemptuously as well towards the King and his faid Court as to the faid Judge, Concordatum est et consideratum per ipsum Dominum Regem et consilium suum, it was by the King and his Councel (which by the Tenour and Title of the Records of the Court of Kings Bench, in the Reigns of King Edward the first Edward the second and Edward the third, Videlicet Placita coram Rege & Consilio (uo, Were the Judges of the Kings Bench, and are not as some have mistaken it, to be at all understood to signifie the Parliament the Kings Greater Councel and Court) ordained and ordered, that the said william de Brewse should without his Sword goe bareheaded, a Banco ipsius Domini Regis ubi placita tenentur in Aula Westmonaster, per medium Aula pradicta cum Curia plena fuerit usque ad Scaccarium et ibidem veniam petat a prefat. Rogero et gratum sibi faciat de dedecore et transgressione sibi fact. Et postea pro contemptu facto Domino Regi et Curia sua Committatur Turri ibid. moraturus ad voluntatem Domini Regis, from the Kings Bench in Westminfter Hall through the middle of the Hall aforesaid, when the Court was full unto the Exchequer, and there aske pardon of the faid Roger of the wrong and injury done unto him, and after for the contempt done to the King and his Court be committed to the Tower, there to remain during the Kings pleasure.

M 2

And

And about that time limited the vast and heretofore more extensive power of the chief Justice of England then so stilled to the placita only coram Domino Rege tenenda affignata (as the Letters Patents or Commissions of the other Judges of the Court of Kings Bench are to this day) to fuch matters as properly concerned Criminal matters, the Crown and Dignity thereof and the peace of the Kingdome the Court of Common Pleas at Westminster being the only true and proper Jurisdiction Commissionated to hear the Common-Pleas and Actions for Lands, and reall and personal Estate or Civill matters concerning and between Subjects one with another, where the contracts, or matters complained, were not made or done in the Kings House or Palace, or Virge thereof, by the Kings Servants within the same House to be heard and determined coram Rege ubicunque fuerit in Anglia, before the King wherefoever he should be in England.

And there was so much care taken by King Edward the second, and his Councill of such as were in his Service, or imployed in his Affairs as when in the ninth year of his Raign, It was enquired or debated in Parliament in what case the Kings' Letters should be sent to discharge an Excommunicate person, the King decreed, as the words of that Law or Act of Parliament do witnesse, that, hereafter no such Letters should be suffered to go forth but in case where it is found that the Kings Liberty is prejudiced by the Excommunications (which in those times were the fulmina or most terrilbe Thunderbolts and Terrors of the English Clergy.)

And it being in the same Parliament (m) com- m 9 E.2. ca. plained of that the Barons of the Exchequer clai- 3. ming by their priviledge that they ought to make answer unto no Complaynant out of the same place did extend their priviledge unto Clerks abiding there called unto orders or unto refidence and inhibit ordinaries that by no means or for any cause fo long as they be in the Exchequer or in the Kings Service they should not call them to accompt, the answer was made by the King, it pleafeth our Lord the King that such Clerks as attend in his Service if they offend shall be correct by their Ordinaries (which was a protection and priviledge as greatly contenting them as the Kings protection or any priviledge of that nature) Like as other, but so long as they are occupied about the Exchequer they shall not be bound to keep residence in their Churches.

With this Addition (faith the transcriber of that Act of Parliament) of new by the Kings Councill (which if understood of the Kings Privy Councill was without doubt ratified and approved by the Parliament that greater Council) viz. The. King and his Ancestors time out of mind have used that Clerks imployed in his service during such time as they are in service ball not be compelled to keep re-

sidence in their Benefices.

And such things as be thought necessary for the King and the Common-wealth ought not to be prejudicial to the liberty of the Church, where we have in and by a Parliament which was alwaies intended as it ought to be a collected wisdome and care of the Nation, a clear exposition of those words of Brac-

ton, qued servitium domini Regis nulli debet effe dam nosum nec debet esse tenenti and of Fleta mulli debet effe damnosum nec injuriosum; the service of the King or any thing done in confequence thereof ought not to be esteemed a wrong or Injury to the Subjects.

n Tilii Comment de rebus Gallicis lib. 2. cap.de. Officiis Domesticis Regum.

The like priviledge (for many Nations doe in their Laws and Constitutions not seldome follow the light of reason in the observation of Neighbours good Examples) (n) having not above fix years before been allowed by Philip Surnamed the fair King of France to the Chaplains and Clerks of

the Kings and Queens of France.

(o) Fleta, who as our great and excellently lear-O Selden difsertatione ad ned Selden saith was an Anonymus or Author with-Fietam 454. out a name but a Lawyer and as is by some supposed to have been at the time of the writing of his book a Prisoner in the Fleet, and therefore gave it the name of Fleta by the mention of certain Statutes made in the 13th, year of the Raign of King Edward the first as also of the Statutes made at Winchester and Westminster, and a record in the 17th, year of the Raign of that King, is beleeved to have written his book in the latter end of the Raign of King E dward the second or the beginning of the Raign of King Edward the third, faith that by a Statute made at Glocester in the fixth year of the Raign of King Edward the first, if a Defendant were effoyned of the Kings (p) fervice and do not bring his warrant at the day given him by his Efloyne he thall recompence the Plaintiffe for his Journy 20, s. or more after the discretion of the Justi-

p6 E. 1. Stat. Glon. ca. 8.

ces and shall be grievously amerced to the King, which alloweth that if the Kings warrant be brought that the Defendant is in the Kings Service (that Statute not mentioning whether in ordinary (q) or 9 Fleta lib. 2. Domestique Service or extraordinary,) such a War- cap. 1. rant should be received and held good, the rule of Law being that, exceptio firmat regulam in cafibus non exceptis, Cases not excepted are alwaies within the protection and meaning of that Law which doth not except them, and declares it to be then the Law, that a man may be excused (r) in a r Fletalib.6. Court of Justice, quod Clameum non apposuerit per cap. 54. servitium Regis quod nulli debet esse damnosum dum tamen docuerit quod venire non potuit, ut si occupatus fuit per Custodiam Castri vel alio modo in servitio suo detentus et impeditus; that he did not enter his Claim to land within a year and a day, by reason of the Kings service, which ought not to be prejudicial to any body, so as he doe make it appear that he could not come, as if he were imployed in the Custody of a Castle or any other way hindered by the Kings Service.

In the Chapter or discourse de Exceptionibus coram senescallo és Marescallo Regis of the Exceptions of a Desendant to be used or taken in an Action brought or commenced before the Steward or Marshall of the King hath these words, Item diceres (s) poterit quod non est obligatus ad districtionem selections. 2. senescalli, likewise he may say that he is not oblises. 61. ged or bound to obey the process or command of the Steward in the Bond taken for the payment of the money by a Clause inserted (which was then

not unusual as it appears by his next precedent Chapter) that the Debtor should be obliged upon non-payment to appear or have the Action or matter determined before the Kings Steward or Marshall, and erft non obligetur ad districtionem senescalli, hoc fibi prodesse non debet, though he be not obliged specially in the Bond or obligation to the procels or power of the Steward, that will not availe the Defendant ed quod est de hospitio Regis et in servitio suo continuo et quo casu respondebit vel indefensus remanebit et pro convicto habebitur quia per servitium Regis essoniari poterit alibi ubique in infinitum, for that he is of the Kings Houshold and continually in his fervice, and in that case must answer, or not defending himself will be convicted, when as he might otherwise in any other Court or Place have Effoined or excused himself as often as he pleased, et servitium Regis nulli debet esse damnosum nec (t) injuriosum (being the very words of Bracton beforementioned) and the Kings Service ought not to be a wrong or damage unto any.

e Fleta lib. 6 ca. 7.

And is notwithstanding of opinion that a defendant may be by his Essoin excused, ex causa necessaria et utili aut causa reipublica, for a necessary cause or occasion, and where the good of the Commonwealth is concerned (as surely it must be understood not to be in the safety, well being, and daily attendance upon the Person of the King as much or very neer the instance or case by him there put) si eat cum Rege in exercitu, if he go in the Army with the King (as all King Davids Servants did when he marched against his rebellious Son Absolum, and as most or very many of the

the Servants of Kings and Princes do use to be) ad patria defensionem cum ad hoc teneatur vel per praceptum Regis, when he goeth with the King to war for the desence of his Countrey being obleged thereunto by the Tenure of his Lands, or the

Kings Commandement.

And having said, that Pleas of Debt do belong unto the Court of Common Pleas; concludes, Sunt tamen (t) cause speciales que alibi terminantur ex t Fieta libe permissione Principis per querelam coram senescallo 2 c.c. 61.

Aula & ut in Scaccario cum causa fuerit Regi necessaria, videlicet, ne Ministri sui de Scaccario ab obsequio suo continuo quicquam impediantur; There are notwithstanding some Causes, which by the leave or good pleasure of the Prince are by Plaint to be determined before the Steward of the Houshold, as also in the Exchequer, when it shall concern the King, that his Officers or Servants be not in their Business hindred.

So as then, and for some time after, it was not likely that any Inroads should be made upon that just and rational Priviledge of the Kings Servants: For, howsoever that even in those more frugal and thrifty days, some of the Kings Menial and Houshold Servants might not then be so beforehand, as it is now termed, or so far from being indebted, but that some Moneys or Debts might be demanded of them, or there might be some occasion of Complaints or Actions to be brought against them.

Yet there appears not any probability or foundation for it, that the Liberties and Priviledges of the Kings Servants were for many years after the twenty

cighth

which limited all Actions before the Steward and Marshal of the Kings House, to such Contracts and Actions only as were or fhould be made betwixt one of the Kings Servants, with any other of his Servants, disturbed or unsecured, or that the Kings Servants were for many years after molested or troubled with the severe and disgraceful way of Imprisonments now used, when the Chancellors and the Justices of the Kings Bench were by an Act of Parliament in the same year enjoyned (u) to attend the King and his Court, and to be there à latere tantas, c. 5. Spel. quam famulantes, always neer him, and as Domeitiques, faith the Learned Sir Henry Spelman; fo that as the words of that Statute are, the King might have at all times neer unto him some that be learned in the Laws, which be able duely to order all such matters as (ball come unto the Court, at all times when need (ball require: Which the Chancellot, and in all likelihood the Chief Justice did not neglect; for, saich Sir Henry Spelman, Such Causes as nulli constitutorum Tribunalium rite competerent ad Palatium seu oraculum Regni, were not limited to the determination or judgment of other Tribunals, came to the Kings Palace, as to the Oracle of the Kingdom; and yet then the King was not without his more than one Attorneys or Procurators, who were men learned in the Law.

(N) 5 E. 3. €a. 2.

(u) Articuli

Super Char-

Gloff.

And King Edward the third was fo unwilling that his Servants should be drawn before other Tribunals, as by a Statute made in the fifth year of his Reign, where it was ordained, (w) That in Inquests to be taken

174

in the Kings House, before the Steward and Marshal, that they [bould be taken by men of the County thereabouts (to avoid, it may be, partiality) and not by men of the Kings House, there is an Exception of Contracts, Covenants, and Trespasses made by men of the Kings House of the one part and the other, and that

in the same House.

And the Chancellors of England were in former times fo, or for the most part Resident in the Kings Court, and accounted as a part of his Family, as until the making of the Act of Parliament in the 36 year of the Reign of King Edward the Third, which did restrain the Pourveyance to the Kings and Queens Houses only, and did forbid it to be made (x) for other Lords and Ladies of the Realm, the (x) 36 E. 3. King did use to send his Writs to the Sheriffs of the c. 2. 7. 7 E. Counties where they had occasion to make any 3. Ros. Parl. Pourveyance for the Chancellor, his Officers and 1 part. m. 17. Clerks, some whereof, as their Clerici de prima for- @ 2 part. 7 ma, now called the Masters of Chancery, were ad E. 3. w. 4. Rebas, had and yet have an yearly allowance for their cellar. 12 R.2. Robes or Liveries, commanding them to be affiftant to their Pourveyors, the Chancery Clerks being in the 18th year of that Kings Reign so accompted to be 2 part of his Servants and Family, as a (y) Complaint (y) Rot. Parl. or Petition being exhibited in Parliament by all the 18E.3.m.41. Clerks of the Chancery, That whereas the Chancellors and Keepers of the Great Seal of England ought to have cognisance of all Pleas and Trespasses done unto or by any of the Clerks of the Chancery, Thomas de Kislingbury Draper of London had forged (the best word they would then bestow upon a Writ

or Action not commenced as it ought to be by Original Writ issuing out of the Chancery) a Bill of Trespass against Gilbert de Chisbull one of the Clerks of the Chancery, whereby to take away from the King and his Chancellor the Cognisance of the faid Action, which belonged unto them, contre Common Ley de la Terre, against the Common Law of the Land, did by a Serjeant of the Mace in London arrest and imprison him in the House of John de Aylesham one of the Sheriffs of London; and although the King sent a Supersedeas, commanding the Plaintiff to surcease his prosecution there, and that he prosecute the said Gilbert de Chysbull in Chancery, if he have any cause of Action against him; the Sheriffs of London, contrary to the Common Law of the Land, and in despite of the King, refused to obevit.

The Parliament acknowledging the aforesaid Rights and Customs of the said Clerks of the Chancery, and the contempt of the King, did ordain, Que breif soit mandez a Maior de Londres, de attacher les div Viscontes, & antres quont este parties & maintenours de la guerele dont ceste bille fait mention per le Corps destre devant le Roy en sa dite Chancellerie a certein jour, a respondre aussibien du contempt fait a nostre Seigneur le Roy & ses mandements, & prejudice de son Chanceller come al dit Clerk des damages & trespas saites a lui; That a Writ should be awarded and directed to the Mayor of London, to arrest by their Bodies the said Sherists of London, and others which were parties and maintainers of the said evil action, to answer before the King in his Chancery at a cer-

tain

tain day, as well for the contempt done to the King and his Commands, and prejudice of his Chancellor, as also to the said Clerk for his damages and

wrong fustained.

And that King, by a Statute made in the 36 year of his Reign, forbidding under severe penalties any (z) Pourveyance to be made but for the King and (z) 36 E. 3. Queen and their Houses, and to take any such Pour- c. 3. veyance without ready Money, there is a pain or penalty to be imposed (as Sir Edward Coke upon Cokes 3 part view of the Record thereof hath observed) upon institut, the Steward, Treasurer, and Controller, and other Officers of the Kings Houbold, for not executing that Statute; which need not to have been, if the cognifance of the Offences therein mentioned had not by that Act been thought fit to have been left unto them.

And was so far from being perswaded to release the constant Attendance of the Justices of the Kings Bench, as when the Commons in Parliament in the 38th year of his Reign Petitioned him, That the Kings Bench might remain in some certain Place, and not be (a) removed, he answered in the negative, That he (a) Rot. Parl.

would not do fo.

And where the Court Marshal was so anciently m. 12. constituted for the Placita Aula five Regis Palatii, for Pleas, Actions, and Controversies concerning the Servants of the Royal Family, when any should happen to arise amongst them, and retained in the Kings House and Attendance, and the Court of Common Pleas was defigned and delegated to do Justice unto all the Common People, in Real and Civil Actions,

38 E. 3.

Actions, in certo loco, a certain place assigned in the Kings House or Palace (for then, and long after until our Kings of England made whitehall their Palace or Residence, it is probable that the Bars, Benches, and Tribunals of the Courts of Chancery, Kings Bench, Common Pleas, Exchequer, and other Courts fince inhabiting that great and magnificent Hall of westminster, were movable, and not so fixt as they now are) and allowed not to travel with the King and his Court, or to follow it, and the Court of Exchequer to take care of the Royal Revenue in its Income, Receipts, and Disburiments: It cannot without some afront or violence done to Reason be imagined, that our Kings, who would have that Court of the Marshal to be neerer their Persons than any other of their Courts of Justice always attending and resident for the concernment properly of their Houshold and Servants, and because they should not be inforced from their daily Service to pursue their Rights, or seek for Justice before other Tribunals, should ever intend or be willing that their Servants and necessary Attendants, should as Defendants, and at the fuit of Strangers, and fuch as are not the Kings Servants, be haled to Prison, diverted from their Service, or obstructed in it, when as Instice in the old, more dutiful, and respectful way, might as cheap, and with leffer trouble, be had against them at the Fountain or Spring of Justice, by the King himself, the Alpha or beginning of it, and Omega the Dernier Resort or last Appeal, where his ordinary Courts of Justice fail and cannot do ir. And where some of our late Kings and Queens of England,

England, not to be wanting unto the Cries and Com\* plaints of their People for want of Justice, did afterwards appoint and allow another Court in the Reigns of King Henry the feventh, Henry the eighth, Edward the fixth, Queen Mary, Queen Elizabeth, called and known by the name of Curia Supplicationum & Libellorum, the Court of Petitions and Requefts, where those that were honoured with the Title and Offices of Judges, and as Commissioners and Masters of Requests, for those particular Causes and Cases, were Bishops or Barons, Lords Stewards of his Houshold, and other Great Officers thereof, Deans of the Chappel, and Doctors of Law and Divinity, were stilled or called Concilium Regis, that Stile or Title, and Masters of Requests, as Symonyma's then fignifying one and the same thing: And a Mastership of Requests was so highly esteemed in the seventh year of the Reign of Q. Elizabeth, as there was besides Walter Haddon Doctor of the Laws, and Thomas Seckford Esq; a Common Lawyer, the Bishop of Rochester 2 Master of Requests; and in the 22. (b) (b) Inter Rec. year of her Reign, Sir William Gerrard Knight, Lord & Registr. Chancellor of Ireland, was, during the time of his Car. Requisibeing in England, made a Master of Requests Extra-tionum. 22 ordinary, and by the Queens Letter of Recommen. Eliz. f. 318. dation to the other Masters of Requests, ordeined to fit amongst them; and their Decrees were sometimes figned by the King himself, with his Sign Manual: and in the tenth year of King Henry the eighth, divers Bills were exhibited unto Thomas Wolsey Archbishop of York, Chancellor of England, and Cardinal, and Legate a Latere, to grant Process for the Defendants

and others of the Kings most Honourable Council in whitehall (but at other times before and fince were

constrained to appear before that Council by Writ or Process of Privy Seal, or a Messenger of the Kings) that Court, as it may be observed by the Regifters and Records thereof, coming to be called the Court of Requests only about the beginning of the Reign of King Edward the fixth. And fuch care was taken by King Henry the seventh, to hear and redress the Grievances and Laments of his (b) People, as in the ninth year of his Reign he affigned and enjoyned them certain months and times diligently to attend unto that business, the greatest Earls and Barons having in those times been made Defendants to several Bills and Petitions, many of the Learned Serjeants of the Law there pleading for their Clients; and Sir Humphrey Brown Kt. one of the Justices of the Court of Common Pleas, in the fixth year of the Reign of King Edward the fixth, being made a Defendant in this Court, where the Plaintiff after 12 years delays in Chancery, and an Appeal from that Court unto this, obtained a Decree against him, and yet no Pleas and Demurrers are found to be put in against the Legality of this Court in the Reigns of King Henry the seventh, Henry the eighth, Edward the fixth, Queen Mary, and Queen Elizabeth, or

founded by any Prescription or Act of Parliament,

hath thrown it under some scruples or objections, with which the former Ages and Wisemen of this

( ) Inter Record & Regiftr. Cur. Requisition. 6 9 H. 7. Orders and Decrees mide by King H.7.

(c) Coles 4. fince, although Sir Edward Coke (c) being unwilling to part institut. allow it to be a Court legally constituted, as not 97. 0 98.

Nation

Nation-thought not fit to trouble their Times and Studies, that Court being not only fometimes imployed in the determining of Cases and Controverfies irremedial in the delegated Courts of Justice, out of the Palace Royal, or by the Privy Council; but concerning the Kings Domelticks or Servants in Ordinary, as may be feen in the 33 year of the Reign of K. Henry the eighth, in the Case of David (d) Siffel of (d) Inter Rewitham in the County of Lincoln Plaintiff, against Ri- cord. & Dechard Siffel his Brother Yeoman of the Kings Robes, for cret. Cur. certain Lands lying in Stamford in the faid County of Supplicat. Lincoln, formerly dismitted by the Kings most Ho- 33 H.8.109 nourable Privy Council, wherein the faid David Siffel was enjoyned upon pain of Imprisonment to forbear any clamour further to be made to the Kings Grace touching the Premises. In the second and third years of King Philip and Queen (e) Mary, Sir John Browne (e)2 & 3 P. Knight, one of the two Principal Secretaries to the & M. 16. King and Queens Majesties, was a Plaintiff in that Court; and in the thirteenth year of the Reign of Queen Elizabeth, Sir James (f) Crofts Knight, (f) 13 Eliz. Comptroller of the Queens Majesties Houshold, 188. against Alexander Scoffeild; for Writings and Evidences in the Defendants Custody. And those great affiftants, Lords and Bishops, Commissionated by the King as his Council or Commissioners, did sometimes in that Court, as in the thirtieth year of the Reign of King Henry the eighth, superintend some Causes appealed aswell from the Lord Privy Seal, as the Common Law; and Sir John Ruffel Knight, Lord Ruffel, the same man (g) or his Father being (g) 13 E.4. in an Act of Parliament in the thirteenth year of the Ret. Parl.

Reign of King Edward the Fourth, wherein he, with the Archbishop of Canterbury, and others, were made Fcoffees of certain Lands to the use and for performance of the Kings last Will and Testament, stiled Master John Russel his Majesties Keeper of the Privy Seal, was in that Court made a Defendant in (b) the first year of the Reign of King Edward the fixth, to a Suit, (i) Petition, or Bill there depending against him, although he was at that time also that Great and Ancient Officer of State called the Lord Privy Seal (there having been a Custos Privati Sigilli, a Keeper of the Privy Scal, as early as the later end of King (k) Edward the first, or King Edward the second, or the beginning of the Reign of King Edward the third, about which time Fleta wrote, nor was it then mentioned as any Novelty or new Office) the Lord Privy Seal, or Keepers of the Kings Privy Scal having ever fince the eighteenth year of the Reign of King Henry the seventh, if not long before, until that fatal Rebellion in the later end of the Reign of that incomparable and pious Prince King Charles the Martyr, successively presided (1) and been Chief part Inflient. Judges in that Court, which was not understood to be illegal in the twentieth year of the Reign of Queen Elizabeth, when in a Case wherein George Albby Esq; was Complainant, against william Rolfe Defendant, an Injunction being awarded (m) against the Defendant, not to profecute or proceed any further at the Common Law, and disobeyed by the procurement dem temperis of the faid william Rolfe, it was ordered, That Francis Whitney Efq; Serjeant at Arms, should apprehend and arrest all and every person which should be found

(h) Inter Record. O Decret. Cur. Requisition. 30 H. 8. fo. 126. (i) I E. 6. fo. 298.

(k) Fleta, li. 2.6A.13.

(1) Coke 2. 554.

(m) Inter Record. & Decret. ejs in Cur. Requifit. 85.

found to prosecute the said Desendant contrary to the said Injunction, and commit them to the safe custody of the Warden of the Fleet, there to remain until order be taken for their delivery by her Majesties Council of that Court; by Authority whereof the said william Rolfe was apprehended, and committed to the Fleet for his Contempts; but afterwards in further contempt the said william Rolfe's Attorney at the Common Law, prosecuting a Nist prim before Sir Christopher Wray then Lord Chief Justice of the Queens Bench, against the Complainant in Guildhall London, the said Attorney was then und there presently taken out of the said Court by the said Serjeant at Arms, and committed to the Fleet.

Nor by Sir Henry Mountague Knight, Earl of Manchefter, who being the Son of a Lord Chief Justice of the Kings Bench, was in Legibus Anglia enutritus & in praxi legum versatissimus, a great and well-experienced Lawyer, and from his Labour and Care therein ascended to the Honour and Degree of Lord Chief Justice of the Kings Bench, from thence to that of Lord Treasurer of England, thence to be Lord President of the Kings most Honourable Privy Council, and from thence to be Lord Privy Seal, and for many years after sitting as Supreme Judge and Director of the Court of Requests, in the Reign of King James and King Charles the Martyr, together with the four Masters of Requests, his Assessor and Assessor in that Honourable and necessary Court.

Which Office or Place à Libellis Principis, of Master of Requests, having been long ago in use in the Roman Empire, and those that were honoured there-

with

T.de Magift. Scriniorum bus Confiftor. Lupanu,l.2.

(a) Lib.1.C. with maximorum culmine dignitatum (n) digni: men accounted worthy of the most honourable and eminent Imployments; and that Office or Place so high-& lib. r. C. ly esteemed, as that great and ever famons Lawyer T. de Comiti- Papinian, who was stiled Juris (o) Asylum, the Sanctuary or Refuge of the Law, did under the Empe-(0) Vincent. rot Severus enjoy the faid Office, to whom his Schotit. Magistr, lar or Disciple Ulpian afterwards succeeded, and Requestarum with our Neighbours the French summo in honore funt, are very greatly honoured, quibus ab Aula Principis abesse non licet, and so necessary, as not at any time to be absent from the Court or Palace of the Prince. The Masters of Requests are and have been with us fo much regarded and honoured, as in all Assemblies and Places they precede the Kings Learned Council at Law, and take place of them; and amongst other Immunities and Priviledges due unto them, and to the Kings Servants, are not to be enforced to undergo or take upon them any other inferior Offices or Places in the Commonwealth.

There being certainly as much, if not a greater Reason, that the King should have a Court of Requests, or Equity and Conscience, where any of his Servants or Petitioners are concerned, as the Lord Mayor of London (who is but the Kings Subordinate Governour of that City for a year) should have a Court of Conscience or Requests in the City of London, for his Servants or the Freemen and Citizens thereof.

The Rights and Conveniences of our Kings of England doing Justice to their Domestick or Houshold Servants, within their Royal Palaces or Houses,

or the virge thereof, and not remitting them to other Judicatures, together with the Duty and Respects never to be denied to Superiority, in order more especially to Government, being as well to be allowed unto our Kings and Princes, and confiftent with right Reason, as it was in the more ancient times of the Empire of Rome, when the Magister (p) Officiorum, or Steward of the Emperors House (p) Guther. or Palace, cui totius Palatii cura pertinuit, to whom de Offic. Dothe whole care of their Houshold did appertain, & mus Anguste apud quem tam in Civilibus quam Criminalibus causis 1.2. c.20. 0 respondere tenentur, and before whom all the Ser- 1.3.c.28. vants of the Houshold were obliged to answer, as well in Causes Civil as Criminal, could do no less then incite and advise them so watchfully to guard the necessary and allowed Priveledges of their Servants, warranted by the dictates of right Reason, and our own Laws, as well as the Laws and Customs of many of our neighbour Nations.

And therefore by an Act of Parliament in the fecond year of the Reign of King Richard the second, confirmed by another in the twelfth, it was (q) or- (q) 2 R. 2. dained, That those that raised horrible and false lies c. 5. 12 R. against the Prelates, Dukes, Earls, Barons, great No. 2. c. 11. bility, and great Men of the Realm, as also of the Chancellor, Treasurer, Clerks of the Privy Seal, Stewards of the Kings House (being the more special and eminent part of his Domestick Servants, and those that did attend him, and in ancient and more respectful Times and Ages to the Servants and Honour of Princes, did wear no less a Title than Proceres Palatii, Lords or Men of great eminency in the Pala-

ces of Kings and Emperors) Justices of the one Bench or the other, and other great Officers of the Realm, whereby debates and discords might arise betwixt the said Lords, or the Lords and Commons, should be taken and imprisoned, until they had found him that first moved it; and if they could not, should be punished

by the advice of the Kings Council.

And in the ninth year of his Reign John de Leicester (r) Rot. Clauf. (r) one of the Clerks of the Chancery being fued in 9. R. 2. parte the Court of Common Pleas by the name of John de unica m. 35. Sleford of the County of Leicester, for a Debt of 24 1. 16s. and after his Writ of Priviledge out of the Chancery, which commanded the Justices of the said Court of Common Pleas to surcease any further proceeding in that Action, being constrained to bring his Writ of Error to reverse a Judgment thereupon notwithstanding had against him; the King, pro eo quod principale placitum loquele predicte ad cognitionem Cancellarii nostri, & nullius alterius, juxta consuetudinem Cancellaria mere pertinet, & ex consequenti ejus accessarium ad eundem Cancellarium pertinere debet, volentes furisdictionem, Privilegium, & Consuetudinem hujusmodi, à tam longo tempore obtenta & approbata, Illesa firmiter observare, in regard that the principal Plea or Suit aforesaid belonged only to the cognisance of his Chancellor, and none other, according to the custom of the Chancery, and that by consequence the cognisance of the Accessary, or any thing concerning the faid principal Plea or Suit belonged to the Chancellors determination; and was willing to preserve the said Jurisdiction, Custom, and Priviledge, for fo long a time continued and approved,

approved, commanded the Record and Process aforesaid, with all which thereunto appertained, to be fent and certified into the Chancery, that he might do thereupon as to Justice appertaineth.

In the 35 year of the Reign of King Henry the fixth, the Abbot of Westminster having an Action depending in the Court of Common Pleas against one of the Yeomen of the Kings Buttery, and an Effoin being cast and allowed that he was in the Kings Service, (1) the King at the day appointed (1) 35 H.6. and given by the Effoin, fent his Writ of Privy Seal rot. 503. to the Justices of that Court, to fignifie that the Defendant was in his Service before the day given by the Essoin, and at the same day, and every time fithence.

By a Statute made in the third year of the Reign of King (t) Henry the feventh, it was declared to be (t) 3 H. 7. Felony for making Confederacies (though not ca. 4. brought to effect) or not so far as to an overt act, our Laws declaring that affectus non punitur (thoughts and intentions only are not to be punished) to imagine the death of the King, or of any Lord of this Realm, or any other person sworn to the Kings Council, Steward, Treasurer, or Comptroller of the Kings House, by any of the Kings Houshold Servants; and ordained, That such Offences (bould be inquired by 12 sad men of the Cheque Roll of the Kings Housbold, and determined before the Steward, Treasurer, and Comptroller, or any two of them.

Which may evidence the intention of that King, and his greater Council the Parliament, to fubmit as little as might be such Offences of his Menial Servants

Servants unto the Judgment and Determinations of his Court of Kings Bench, which otherwise was the most proper Court and means for the Trial thereof.

In the Reign of King Henry the eighth, George Ferrers Gentleman, his Servant, and a Member of the House of Commons in Parliament, being arrested and taken in Execution, and Sir Thomas Moyle Knight, then Speaker of the House of Commons, and the Knights and Burgesles in Parliament assembled, sending the Serjeant at Arms attending upon them to the Compter in Breadstreet in London, where the faid George Ferrers was detained a Prisoner, to demand him, the Officers of the City and others affaulted and grievously misused him; of which a Complaint being made to the King, he called before him all the Judges of the Kingdom, declared unto them, That he being Head of the Parliament, and attending in his own Person upon the business thereof, ought in reason to have Priviledge for him and all his Servants attending there upon him; so as if Mr. Ferrers (11) had been no Burgels or Member of Parliament, but only his Servant, that in respect thereof he was to have a Priviledge as well as any other. To which all the Judges declaring their affent by Sir Edward Mountague Knight, Lord Chief Justice of the Court of Kings Bench, the Grandfather of the now Earl of Manchester Lord Chamberlain of the Kings Houthold, an Order was made to fine the Sheriffs of London, punish the Riotors, and deliver Mr. Ferrers out of Prison; but in compassion of the Creditor, an Order was made that he should not lose

(u) Cromptons furifdiction of Courts, tit. Parliament, lose his Money for which he had taken him in Execution.

And fo great a regard was in that Kings Reign had of the Gentlemen of his Privy Chamber, as that great and imperious Favorite Cardinal wolfey Archbishop of (w) York, being at Camood Castle in (w) Negoti-Torkshire arrested by the Kings command, by the a ions, or Life Earl of Northumberland, attended by Mr. welch one of Cardinal of the Gentlemen of the Kings Privy Chamber, of Wolfey, writ-High Treason; and being unwilling to obey the Earls his own Ser-Authority, unless he would shew the Kings Com- vants, 100 mission for it, which the Earl refused to do, the & 101. Contest at the last ended in the Cardinals turning to Mr. welch, and faying, well, there is no more to do, I trow you are one of the Kings Privy Chamber, your Name is Mr. Welch; I am contented to yield unto you, but not unto the Earl without I fee his Commission; for you are a sufficient Commissioner in this behalf, being one of the Kings Privy Chamber.

And in the 21 year of the Reign of that King, fuch a care was taken to keep not only the Chaplains of the King, Queen, Prince, and Princess, or any of the Kings or Queens Children (x) or Sifters; but (x) 21 H.8. of the Lord Chancellor, Lord Treasurer, Cham- ca. 20. berlain, Steward, Treasurer, and Comptroller of the Kings Houshold, from any prejudice whilst they attended in their Honourable Housholds, and exempt them from the Penalty of Ten Pounds a Month whilst they should not be resident at their Benefices, as they did by an especial Exception provide for

their Indempnity therein.

And in the same year and Parliament the Chancellor,

cellor, Treasurer of England, and the Lord President of () the Kings Council, are said to be at-(y) 21 H. 8. tendant upon the Kings most Honourable Person. ca. IO.

And in the 24 year of his Reign, some of his Servants having been impannelled and retorned upon Turies, he fignified his diflike of the fame unto the Justices of the Courts of Kings Bench and Com-

mon Pleas, in these words.

Trusty and Right-well-beloved, We greet you well. Whereas we understand that all manner of your Officers. and Clerks of both our Benches be in such wife priviledged by an ancient Custom, that they be always excepted out of all manner of Impannels: We confidering that the Hedd Officers and Clerks of our Houbold, by reason of the daily Business in our Service, have been semblably excepted in time passed, unto now of late, that some of them have been retorned in Impannels, otherwise then heretofore bath been accustomed: We will and command you, That in case any Hedd Officer or Clerk of our Housbold shall hereafter fortune to be put in any Impannel, either by the Sheriff of our County of Kent, or by any Sheriff of any County within this our Realm, for to be retorned before you, without our special Commandment in that behalf, ye upon knowledge thereof cause him or them so impannelled to be discharged out of the said Impannel, and other sufficient Persons to be admitted in their place; and that you fail not this to do from time to time, as often as the case shall require, as ye tender our pleasure. Yeoven under our Signet at our Manor of Richmont, the fourth day of October in the twenty fourth year of our Reign. To our Trufty and Well-beloved the Chief Justices of both

both our Benches, and to all other their fellows Justices

of the fame.

In the Act of Parliament made in the twenty fifth year of his Reign against excess of Apparel, there was a Proviso, That all Officers and Servants waiting and attending upon the King, Queen, or Princess, daily, yearly, or quarterly, in their Housbolds, or being in their Checque Roll, may by the Licence of the King use or wear Apparel on their Bodies, Horses, Mules, &c.

according to such Licence.

And not only King Henry the Eighth, but his three Estates the Lords Spiritual and Temporal, and Commons affembled in Parliament, in the 31 year of his Reign, did fo (z) much attribute to the Kings (z) 31 H.S. Servants in Ordinary, and the Honour of their Im- ca. 19. ployments, as to grant by A& of Parliament, That the Lord Chancellor, or Lord Keeper of the Great Seal of England, Lord President of the Kings Council, Lord Privy Seal, the Great Chamberlain, Constable, Marfoal, and Admiral of England, Grand Master or Stemard of the Kings most Honourable Housbold, and Chamberlain, Should in Parliament, Star-Chamber, and all other Assemblies (which was in no Kings Reign before allowed) fit and be placed above all Dukes, except such as should happen to be the Kings Sons, Brothers, Uncles, Nephews, or Brothers or Sifters Sons; That the Lord Privy Seal Should sit atd be placed above the Great Chamberlain, Constable, Marsbal, and Lord Admiral of England, Grand Master or Lord Steward, and the Kings Chamberlain; and that the Kings Chief Secretary, if he be of the Degree of a Baron, Should in Parliament, and all other Assemblies, fit and be placed

placed before and above all other Barons; and if he be a Bishop, above all other Bishops not having any of the Offices above-mentioned. Precedency amongst the English Nobility being heretofore so highly valued and esteemed, as it was not seldom very much insisted upon; And so, as in the Reign of King Henry

the fixth it was (a) earnestly claimed and controver-(a) 3 H. 6. ted betwixt John Duke of Norfolk, and Richard Beau-Rot. Parl, m. champ Earl of warwick, and in divers other Kings 4 artic. 13. Reigns greatly contended for, and stickled betwixt

some of the Great Nobility.

Novel. 53.

Cafu fact.

The Lord Chancellor or Keeper of the Great Seal of England, and the Chamberlain of the Kings House, and the Steward thereof, as appeareth by their Subscriptions as Witnesses unto sundry Charters of our former and ancient Kings, not having been before allowed so great a Precedency as that Act of Parliament gave them, or as that high Place, Trust, and Office of Lord Chancellor, or Lord Keeper of the Great Seal of England, according to the Custom and Usage of former Ages in all or the most of the neighbour Kingdoms and Monarchies, have juftly merited, who in the times of the ancient

Emperors of Rome were, as (b) Gutherine noteth, (b) Guther. de Offic. De- Stiled the Quastores Palatii, and had in Ulpian's time. mus Angusta who flourished in the Reign of Alexander Severus 1.2.6.18.0 the Emperor, antiquissimam originem an honourable and long-before original; and so necessary in the & 114. Nothen Administration of Justice, as the Emperor Tuvel. Valen: in. Stinian, that great Legislator and Compiler of Laws, de Homicid. ordained, That Divina Jussiones Subscriptionem haberent gloriosissimi Quastoris nec emissa aliter a Ju-

dicibus

dicibus reciperentur quam si subnotata fuerint à Quafore Palatii, That the Imperial Mandates should be Subscribed by the Chancellor (who was sometimes Stiled Justitia Custos, & vox Legum, Concilii Regalis particeps, the Keeper or Repository of Justice, the voice or mouth of the Laws, and one of the Privy Council) and those Mandates being sent (not much unlike the Original Writs issuing out of our High Court of Chancery, w' were then also called Breves) were not to be received by the Judges, unless they were figned by the Questor Palatii, or Chancellor; but subscribed their Names as Witnesses to Charters after Bilhops, Abbots, and Barons, as amongst many other instances may be given in that of Robert Parning Chancellor, and of Randolf de (c) Stafford (c) Carta H. Steward of the Houshold, in the seventeenth year 1. Canobio of the Reign of King Edward the third.

By a Statute made in the (d) thirty second of the Dugdales Reign of King Henry the eighth, the Parliament did Monasticon, not think it unreasonable that there should be a Great 410. Cart. Master of the Kings House, and have all the Autho- 17 E 3. m.

rity that the Lord Steward had.

By a Statute made in the thirty third year of his (d) 32 H. 8.

(e) Reign, for the punishment of such as committed Murder or Man-slaughter in the Kings
Court, or did strike any man there, whereby
Bloodshed ensued, the Trial of such Offenders
was not thought sit to be within the Cognisance
or Jurisdiction of any of the Courts of westminster-hall, or of any Court inserior unto them;
but ordained to be by a Jury of 12 of the Yeomen Ofsicers of the Kings Houshold, before the Lord Steward,

(c) Carta H.
1. Canobio
Normicensi
in 1 parte
Dugdales
Monasticon,
410. Cart.
17 E 3. m.
27.
(d) 32 H. 8.
ca. 8.
(e) 33 H. 8.

or in his absence, before the Treasurer and Comptroller

of the Kings Housbold.

And the Parliament in the first year of the Reign of Queen Mary, repealing the aforesaid Act of the 32 year of the Reign of King Henry the Eighth, did, (f) 1 P. & touching the Great Master of the (f) Kings House, notwithstanding understand it to be reasonable, that the Name, Office, and Authority of the Lord Stew-

ard should be again established.

And so little the Priviledge of the Kings Servants in Ordinary seemed to be a Grievance, or illegal to be first complained of to the Lord Chamberlain of the Kings Houshold (which Honourable Office and Place about the King appears to have been before that Great Office of Chamberlain of England, bythe mention of Hugoline Chamberlain to King Edward the Confessor, and the Subscription of Ralph Fitz Stephen, as a Witness to a Charter of King Henry the Second,

Shirlurn in Stic. 424.

M. ca. 4.

(g) granted unto the Abby of Shirburn) before 2. Canobio de they were to be subjected to Arrests or Imprisonments for Debt, and other Personal Actions, before I parte Dug Execution or Judgment had against them upon their dales Mona- appearance, and not claiming or pleading their Priviledge (for then or in fuch a case they have not fomerimes been priviledged, although the cause and reason of their Priviledge was as much after Judgemeut and Execution, as before; which a submission to the Jurisdiction of another Court, and not claiming their Priviledge, should not prejudice or take away, no more than it doth in the Case of Members of the House of Commons in Parliament, and their Servants, who by their Priviledge of Par-

liament

liament are not to be disturbed with Executions, or any manner of Process before and after Judgment) as Queen (h) Mary did in a Case depending in the (h) Dier Court of Common Pleas, betwixt Huggard Plain- Mich. 4 & 5 tiff and Sir Thomas Knivet Defendant, direct her Ph. & M. Writ to the Justices of that Court (which was but 9.17. as one of the old and legal Writs of Protection, or fomething more especial) certifying them, That the faid Sir Thomas Knivet was by her command in her Service beyond the Seas, and had been Essoined; and therefore commanded them, That at the time appointed by the faid Essoin, and day given for his appearance, he should not have any default entred against him, or be in any thing prejudiced; which the Judges were so far from disallowing, as having before fearched, and finding but few, and that before-mentioned Privy Seal, in the 35 year of the Reign of King Henry the Sixth, in the Case of the Kings Yeoman of the Buttery, being held by them to be insufficient (but declared not whether in substance or Form, howsoever there may be some probability that it was allowed, by the entring of it upon Record) they did, as the Lord Chief Justice Dier hath reported it, advise and affist in the penning and framing of the Writ for Sir Thomas Knivet, whereby to make it the more legal.

Queen Elizabeth, who was as tender of her Peoples Liberties as of her own, yet was upon some occasion heard to say, That he that abused her Porter at the Gate of her House or Palace, abused her, did cause a Messenger (of her Chamber) to be sent unto a Desendant in the Court of Requests, commanding

manding him in her Name not to vex, sue, or trouble the Complainant, but suffer him to come and go freely unto that Court, until such time as other

Order be by the Council of the faid Court taken therein: And in the second year of her Reign an Injunction was awarded to the Defendant, (i) com-(i) Inter Record. Cur. manding him to permit the Complainant to follow Supplic. 1 E!. his Suit in that Court, without Arrest, upon pain fo. 131. Ibid. of one hundred pounds. In the same year Sir Ni-2 Eliz. fc. cholas Bacon, that great and well-experienced Lawyer 221. and Statesman, Lord Keeper of the Great Seal of England, and a man highly and deservedly valued both of Prince and People, did, in the Case between Philip Manmaring Complainant, Henry Smallwood and others Defendants, so well understand the aforefaid Priviledges of the (k) Kings Servants to be just (k) Cafes in and legal, as upon a Bill exhibited in Chancery by

Chancery, coll:Hed by Mr. Geo. Cary a Master of Chancery.

In the eighth year of her Reign Thomas Thurland Clerk of the Queens Closet (1) being Plaintiff in the Court of Requests, against William Whiteacres and Ralf Dey Defendants, an Order was made, That whereas the Complainant was committed to the Fleet by the Justices of the Court of Common Pleas, upon an Execution of 600 l. the Debt being only 300 l. it hath been given this Court to understand by divers of the been

the Plaintiff to stay a Suit in the Marches of wales,

he ordered. That if the Complainant should not by

a day limited bring a Certificate from the Officets of

the Queens House, or otherwise, (whereby the

Court might credibly understand, that his Attendance in the Queens Service was necessary) that Cause should be determined in the Marches of wales.

600.

Queens Highness most Honourable Privy Council, that Her Majesties pleasure is to have and use the present and speedy Travel of the faid Thomas Thurland in and about divers of Her Highness weighty affairs in fundry places of England and Wales, for and about the Mineral Causes there, to the very likely Commodity and benefit of Her Majesty and all her Subjects: It is therefore Ordered and Decreed by Her Majesties Council of this Court, that the said Thomas Thurland (hall and may with his Keeper appointed by the warden of the Fleet Travel into any part of the said Realm, about the affairs aforesaid, without the disturbance, Let or Interruption of the faid Defendants; And to that purpose an Injunction is granted against the said Defendants, their Attornies and Solicitors, upon pain of one Thousand pounds, and commanded that neither they nor any of them Chall vex, sue, trouble, molest or implead the said Complainant, or Richard Tirrel Efg; Warden of the Fleet, or any other person what soever for the Travelling or departing of the said Thomas Thurland from the faid Prison of the Fleete with his Keeper appointed as aforesaid, from the day of the making of this Decree until the feast of all Saints next en-Juing, if the faid Complainant fo long shall have canse to attend about the said affairs.

And many Cases might be instanced where that great Supporter of Monarchy, Regality, and Honour, in Her best of Governments would not suffer the Just Priviledges of Her Court and Servants to be violated but would be sure severely to punish

the Contradictors and Infringers of them.

About

About the eighteenth year of her Raign, the Earl of Leicester Master of the Horse unto that Excellent Queen and great preserver of Her Proples Liberties, did commit to Prison one that had Arrested one of Her Servants without leave, and the Creditor being shortly after upon his Petition released by the said Earl, who blaming him for his contempt and misdemeanor therein, and being answered by the Creditor that if he had known so much before hand, he would have prevented it; for that he would never have trusted any of the Queens Servants, was fo just as to inforce that Servant of the Queens to pay him presently or in a short time after the faid debt, And told him that if he did not thereafter take a better care to pay his Debts he mould undo all the other of the Queens Servants, for that no man would trust them, but they would be constrained to pay ready money for every thing which they should have occasion to buy.

In the fix and twentieth year of Her Reign, Henry Seckford Esq; one of the Grooms of Her Majesties Privy Chamber, being Complainant against william Camper Desendant: the Desendant was in open Court upon his Allegiance enjoyned to attend the said Court from day to day until he be otherwise Licenced, and to stay and (m) Surcease and no surther prosecute or proceed against the Complainant in any Action, at, and by the Order of the Common Law.

m Inter rec.& decret. Cur.Supplic. & Libell.26 Eliz.fol.96.

And about the Seven and twentieth year of Her Reign some controversies arising betwixt the Lord Mayor

Mayor and Citizens of London, and Sir Owen Hopton Knight Lieutenant of the Tower of London, concerning some Liberties and Priviledges claimed by the Lieutenant and his refusal of Writs of Habeas Corpora, and that, and other matters in difference betwixt them, being by Sir Thomas Bromley Knight Lord Chancellor of England (n) the Earl of Leicester, and other, the Lords " Stows Surof the Council, referred unto the confideration vey of Lonof Sir Christopher Wray Lord Chief Justice of Queens Bench, Sir Edmond Anderson Knight Lord Chief Justice of the Court of Common Pleas, and Sir Gilbert Gerrard Knight Mafter of the Rolls, they did upon hearing of both parties, and their allegations, Certifie under their hands, that as concerning such Liberties which the Lieutenant of the Tower claimeth to have been used for the Officers and Attendants in the Tower, (some of them being of the Queens Yeomen of the Guard and wearing Her Livery Coates and Badges as they do now the Kings) as not to be Arrefted by any Action in the City of London, and Protettions to be granted unto them by the Lieutenant, and his not obeying of writs of Habeas Corpus, They were of opinion that such Persons as are dayly Attendant in the Tower of London, Serving Her Majesty there, are to be Priviledged, and not to be Arrested upon any plaint in London, But for Writs of Execution or Capias Velagatum's (which the Law did not permit without leave first asked the latter of which by the Writ it felf brings an Authority in the Tenor and purport of it to enter into

into any Liberties but not specifying whether they intended any more than Capias Vilegatum, when it was only after judgement,) or such like they did think, they ought to have no priviledge which the Lords of the Council did by an Order under their hands as rules and determinations to be at all Times after observed Ratific and Confirm.

o Rot. Par. 10. Jac. Part.10. m. 8.

And our Learned King James (o) well understanding how much the Weal Publick did Confift in the good Rules of Policy and Government, and the support not only of His own Honor and just Authority but of the respects due unto his great Officers of State and fuch as were by him imployed therein did for the quieting of certain controversies concerning Precedence betwixt the younger Sons of Viscounts and Barons and the Baronets and others. by an Ordinance or Declaration under the Great Seal of England, In the tenth year of His Reign Decree and Ordain; That the Knights of the Most Noble Order of the Garter, the Privy Councellors of His Majestie His Heires and Successors, the Master of the Court of Wards and Liveries, the Chancellor and under Treasurer of the Exchequer, Chancellor of the Dutchy of Lancaster, the Chief Justice of the Court commonly called the Kings Bench, the Mafter of the Rolls, the Chief Justice of the Court of Common Pleas, the Chief Baron of the Exchequer, and all other the Judges and Barons of the degree of the Coife of the Said Courts, Now and for the Time being shall, by reason of such their Honourable Order and Imployment, have Place and Precedence in all Places. Places and upon all occasions, before the younger Sons of Viscounts and Barons, and before all Baronets, any Custom, Use, Ordinance, or other thing to the

Contrary, Notwithstanding.

In the four and thirtieth year of Her Reign Sir Christopher Wray Knight Lord Chief Justice of Her Court of Queens Bench, Sir Edmond Anderson Knight Lord Chief Justice of the Court of Common Pleas, and the rest of the Judges of the aforesaid Courts seeming to be greatly troubled that divers Persons having been at several Times committed without good cause shewed, and that fuch Persons having been by the Courts of Queens Bench, and Common Pleas discharged of their Imprisonments, a Commandment was by certain great Men and Lords procured from the Queen to the Judges that they should not do the like thereafter, all the faid Judges, together with the Barons of the Exchequer did under their hands Exhibit unto the Lord Chancellor, and the Lord Burghley Lord Treasurer of England their Complaint or Remonstrance in these words, viz. We. Her Majesties Justices of both Benches, and Barons of the Exchequer, defire your Lordsbips, that by some good means some Order may be taken that ber Highness Subjects may not be Committed or detained in Prison by Commandment of any Noble Man or Counsellor, against the Laws of the Realm, either P Andersons else to help us to have access unto her Majesty to Reports, Sett. the end to become Suitors unto Her (p) for 305. 6. the same. For divers have been imprisoned for Hist. Collect. Suing Ordinary Actions and Suits at the Common 507 & 508.

Lim until they have been constrained to leave the Same against their Wills, and put the Same to Order, albett Judgement and Execution have been had therein, to their great losses and griefs. For the aid of which persons her Majesties Writs have sundry Times been directed to fundry Persons having the sustody of Such Persons unlawfully Imprisoned, upon which Writs no good or Lawful cause of Imprisonment bath been returned or Certified; Whereupon according to the Laws they have been discharged of their Imprisonment : some of which Persons so delivered have been again Committed to Prison in secret places, and not to any Common or Ordinary Prison or Lawful Officer or Sheriff, or other Lawfully Authorifed to have or keep a Goal; So that upon Complaint made for their delivery, The Queens Courts cannot tell to whom to Direct Her Majesties Writs; And by this means Justice cannot be done. And moreover divers Officers and Serjeants of London have been many Times Committed to Prison for Lawful Executing of Her Majesties Writs, Sued forth of Her Majesties Courts at Westminster: and thereby Her Majesties Subjects and Officers so terrified, that they dare not Sue, or Execute Her Majefies Lawes, Her Writs, and Commandments: Divers others have been fent for by Pursevants, and brought to London from their dwellings; and by unlawful Imprisonments have been constrained, not only to withdraw their Lawful Suites, but have been also compelled to pay the Pursevants so bringing such Perfons great summes of money. All which upon Camplaint the Judges are bound by Office and Oath to relieve and help, By and according to Her Majefies

flies Laws. And where it pleaseth your Lordships to will divers of us to fet down, in what cafes a Prifoner, fent to Custody by Her Majesty or her Council, is to be detained in Prison, and not to be delivered by Her Majesties Court or Fudges; we think that if any Person be committed by Her Majesties Command from Her Person (which may be understood to be so when it is by the Lord Chamberlain, of the Kings house or other great Offcers of the Houshold, who are commonly Privy Councellors, and do it by their Princes Authority) or by Order from the Council Board: And if any one or two of the Council Commit one for High Treason, such Persons, so in the Cases before Committed, may not be delivered by any of Her Courts without due tryal by the Law, and Judgement of acquittal had. Nevertheless the Judges may award the Queens Writ to bring the Bodies of fuch Prisoners before them; and if upon return thereof the causes of their Commitment be certified to the Judges, as it ought to be, then the Judges in the cases before ought not to deliver him, but to remand the Prisoner to the place from whence he came; which cannot conveniently be done unless notice of the cause in general or else in special be given to the Keeper or Goaler that (ball have the custody of such a Prisoner.

In which Remonstrance or Address it doth not appear that any Commitments, therein complained of, were for Arresting any of the Oncens Servants without leave first demanded, or that any of the matters, therein suggested, were for that only cause or before Judgements or Execution obtained

fome

some of them being expresly mentioned to have been after Judgements, and no certain evidence more than for what came directly unto those Learned Judges by the before mentioned Mandate of the Queen for the supposed grievances therein, which (though much be attributed to the well weighed wildom of those grave Judges, and that their Information had as much of Truth as without a hearing of all parties and legal Examination of Witnesses could be found in it ) cannot be prefumed to be had in a judiciall way after Trials or Convictions, but received and taken in from the murmur and Complaints of some Attorneys or Parties only concerned, without hearing of the other fide or parties; or that it was so prevalent with the Queen as to make any Order or restraint or cause any Act of Parliament to be made for that purpole. For it will not come within the Compals or Confines of any probability or reasonable construction that those Reverend and Learned Judges Sir Christopher Wray and Sir Edmond Anderson, who together with Sir Gilbert Gerard Master of the Rolls had in the case betwixt the Lord Mayor and Citizens of London and (q) Sir Owen Hopton Knight Lieutenant of the Tower of London, In the seven and twentieth year of Her Raign, which was but seven years before Certified under their hands unto Sir Thomas Bromley Knight Lord Chancellor, and others of Her Privy Council, that fuch persons as are daily attendant in the Tower serving Her Majesty the (which was more remote from Her Person and Presence of Her Royal

q Stows Survey of London. 245.

Royal Residence or Palace at White-hall) were to be Priviledged, and not to be Arrested upon any plaint in London, but for Writs of Execution or Capias Utlagarum or fuch like, they did think they ought to have no Priviledge. And that Master Lieutenant ought to return every Habeas Corpus out of any Court at Westminster: So as the Instices before whom it (ball be returned, as the cause (ball require, may either remand it with the body, or retain the matter before them and deliver the body, as Justice shall require; would complain of Commitments of fuch as Arrested any of Her Servants without feave, when it might be so casily had: and the Lord Chamberlain of that time was likely to be as little guilty of enforcing Creditors to withdraw their Suits, or loofe their debts, as the Lord Chamberlain and other great Officers of the Royal Houshold have been since or are now. Nor do the words of that Information import or point at the Marshalsea of the Queens Court, or Her Mesfengers; to whom as the Kings Officers or Ministers of Justice the Queens Writ might have been brought or directed, the sending of Pursevants there remonstrated being more likely to have been for some other Concernments, and not for Arresting without leave which for ought that appears was never yet in fore Contradictorie, upon any Cause or Action argued solemnly at the Bar and Bench, adjudged to be a breach of any of the Laws of England or Liberties of the Subjects, or not to be any good Cause of Arresting or Imprifoning fuch, as in despite of Majesty would in Contempt

Contempt thereof make it their business, especially when they needed not to do it, to violate and infringe the Royal Jurisdictions and reasonable Customs of their Sovereign and Protestor, and the long ago and for many ages allowed Priviledges of their Servants.

And therefore william Earl of Pembroke, L. Chamberlain of the Kings House, a man very zealous for the Peoples Rights and Liberties, may be believed not to have transgressed therein, when he did about the latter end of the Reign of King James give His Warrant to one of the Kings Messengers of the Chamber. to take into His Custody and bring before him one Mr. Sander fon, for cauling Sir Edward Gorge one of the Gentlemen of the Kings Privy Chamber to be Arrested, without Licence first obtained; and, being in the beginning of the Reign of King Charles the Martyr Lord Steward of the Kings most Honourable Houshold, did commit a Clerk or Servant to a Serjeant at Law to the Prison of the Marbalea, for Arresting one of the Kings Servants without Licence; and, when he was bailed by the Judges upon a Writ of Habeas Corpus, comnvitted him again; and being let at Liberty the fecond time upon a Writ of Habeas Corpus, was again Committed by him, and could not be Released, until he had fet at Liberty the Kings Servant.

And Philip Earl of Montgomery Lord Chamberlain of the King in His Most Honourable Household, when he did the first day of November 1626. direct his Warrant to all Mayors Sheriffs Baylists

1616.

Bayliffs and Constables, &c. to permit Mr. Thomas Musgrave of Idnel in the County of Cumberland, His Majestics Muster Master for the County of Westmerland to come to London about His Majestics special Service, and that being performed to return without any their let molestation or

Impediment.

The eighteenth of November 1626 in the case of Robert With and Susan His Wife, who had Petitioned him for leave to take the benefit of His Majesties Laws against one Mr. Burton, and obteined his Lordships Order for their Relief therein, if he gave them not fatisfaction within three moneths after the fight thereof; yet being after given to understand that the said Mr. Burton, who was but a Surety, and in that respect deserved some Commiseration, had offered them very reafonable satisfaction: which was refused, his Lordthip being desirous to understand the Nature of the debt with the qualities and reasons of Master Burtons offers, and their refusal; did refer the Examination thereof unto Sir Robert Rich and Sir Charles Cafar Knights, two of the Masters of the Chancery, to mediate an Accord betwixt them, or otherwise to Certifie and Report the true state of the business betwixt them; and in the mean time required them as they would answer the contrary at their peril, that they forbear to make use of his former Order, or any other whatfoevers the which for that purpose he did utterly revoke and annihilate.

The three and twentieth of November 1626 R 2 being being the second year of the Reign of that pious King Charles the Martyr, John Durat, and William Garnat were by the said Lord Chamberlains, warrant apprehended by a Messenger of the Kings, upon the complaint of Thomas Wadlow.

The fixth day of December, in the same year the said Lord Chamberlain granted his Warrant, for the apprehension of Henry Cartar,

a Serjeant, and John Wright his Yeoman, upon the complaint of Mr. Simpson the Queens Jeweller.

The ninteenth day of Fanuary in the same year Thomas Marten Haberdasher of London was by the like Authority apprehended, at the Complaint of

Captain Fortescue.

1627.

The eighth of May 1627 in the third year of His said Majesties Reign Fames Palmer of Leicester was by a like Warrant apprehended, upon the complaint of Henry Stanford a Yeoman of the Guard.

The fixteenth of July 1627 a Warrant was granted by the faid Lord Chamberlain to apprehend Francis Hawker a Cook, and William Fulk Servant to Mr. Howard, upon the Complaint of Joane Hewer, whose husband being Servant to Mr. Boreman His Majesties Locksmith, and employed by him in His Majesties Service, was by them hurt and wounded.

The seventeenth of July 1627 the said Lord Chamberlain sent his Letter unto Mr. Atkinson, for the respiting of an Order (probably for a Licence to take his course at Law against one Mr. Thomas Wood) until the end of Michaelmas

Term

Term 1627 withal advising him to forbear all further Profecution against the said Master wood, or that he should hear surther from his

Lordship.

The fifteenth of September 1627 a Warrant figned by the faid Lord Chamberlain was directed unto all Mayors, Sheriffs, Bayliffs, &c. not to hinder or molest Dixi Hickman, Esq; Gentleman Usher to the Queen of Bohemia, whilst he was here Imployed about Her Service.

The thirtieth of September 1627 a Warrant was granted by him for the apprehension of William Wiltsbire Under Sheriff of Hampsbire, and Robert Prime alias Island a Bayliff, upon the complaint of Sir George Hastings; and being the tenth of November following thereupon committed to the Marshalfeys, and endeavouring to procure his release by an Habeas Corpus, the said Lord Chamberlain Islued out another Warrant bearing Date the nine and twentieth of that November, to detein him, with Certificate that his sirst Commitment, and that warrant for his Commitment, was by his Majesties Special Commandment.

The twelfth day of October in the aforesaid year granted his Warrant for the apprehension of one Andrews a Constable of Petty France upon the complaint of one Ward Yeoman of the Guard.

The two and twentieth of Fanuary next following, for the apprehension of Francis Foster and R 3 divers divers others for Arresting of John Smith His Ma-

jestics Girdler.

1628

The tenth of March next following, wrote his letter to the Lord Mayor, Sheriffs and Recorder of Tork, in the behalf of Robert Metham a sworn Messenger in Ordinary appointed to attend upon the Receiver of Torkshire upon his Complaint for being there Arrested without leave.

In the year of our Lord 1628 granted his Warrant for the apprehension of Richard Harris, Thomas Rosse of Leaden-hall-street London Merchants John Offley of Hampsbire and a Servant to the Clerk of the Peace for Middlesex upon the Complaint of

Francis de Champer.

Did write his letter to the Lord Mayor of London, acquainting him with the Arrests and Imprisonments of Mr. George Morgan and others of his Majesties Servants and desired his Lordship to give notice to the Sherisses of London, and other Officers in London that they sorbear to Arrest or Imprison His Majesties Servants without acquainting his Lordship therewith, who promised upon such occasions to do Justice.

Grant a Warrant for the apprehension of Robert Armstrong for the Arresting of the Post Master

of Saint Albans.

And the like to apprehend william Martin of Itham in the County of Kent upon the Complaint of Anthony Hobbes one of the Yeomen of the Guard for an Attachment of his Horse, and a Warrant or Letter to discharge the Apprentices of the King and Queens Watermen from being Imprest for Sea

Sea Service in these words, viz. Whereas I understand that some of the Apprentices and Servants of the King and Queens Water-men have lately been imprest for His Majesties Service at Sea; These are to require you Immediately upon the sight hereof to cause them to be released and discharged; And that hereafter you forbear to Imprest them, the said watermen or their Servants, they being Obliged unto a daily Attendance upon His Majesties Person and the Queens. And for so doing this shall be your warrant.

And the fixteenth day of February in the same year (after His Majesties assent by Act of Parliament unto the Petition of Right, which was the fix and twentieth day of June in the year aforesaid) upon an abuse committed upon the Persons of Mr. Nicholas Laneir and other His Majesties Servants in Ordinary by haling them to Prison in an unwarrantable and barbarous manner the Lords of His Majesties Privy Council, amongst which was the Lord Keeper Coventrey, did by their Letter to Sir Richard Deane then Lord Mayor of London greatly blame him for the permitting of the same in the words following, viz.

A Fter our Hearty Commendations to your Lordship, whereas it is come to the knowledge of His Majesty and this Board that upon a light Affray or Breach of Peace fallen out in the Exchange, wherein Master Nicholas Laneir and other His Majesties Servants in Ordinary mentioned in the Petition, which we send you included, happened to be interested;

sed: That the Constables and other Officers who came under pretense of Keeping the Peace did by colour of their Office (notwithstanding they knew them to be His Majesties Servants) in an unwarrantable and barbarous manner carry and hale them along the streets to Prison (being at noon day) refinfing to carry them first before a Magistrate as they ought to have done, and as was by the faid Gentlemen demanded: however upon calling some of the faid parties complained of before us and entring into examination of the business we found in general, that the carriage of the said Officers and their assistants had been such as was informed, yet because the more particular inquiry thereof was a work not so fit to trouble the Board withal, we have thought good therefore to refer the due examination thereof to your Lordship letting you to know that if ( as is conceived) you understood of the miscarriage of the said Officers and past it over without reproof, that you have wilfully failed, both in discretion and duty for that you cannot be ignorant that the proper and usual way of proceeding in a case of this nature against his Majesties Servants had been not by committing them to Prisons but by an address or appeal to the Lord Chamberlain of His Majesties Houshold, or in his absence to such other Principal Officers unto whom it appertains to give redress; and therefore as the more we consider of it the more we marvel at the insolent carriage of your Officers and the Connivency of your Lordship and other the Chief Mayistrates of the City. So you are to know that His Majesty and this Board expects not only a good accomps

compt from you in the examination and proceedings of the said Officers and others their affistants in this particular, but that His Majestic expects and requires at your hands not as a Respect only but as a Duty, that hereafter upon any the like occasions happening within the City concerning His Servants the proceedings against them be by Appeal and Information, first to the Lord Chamberlain or in his absence to such other Principal Officers to whom it properly appertaineth, and met by Commitments to Godls and Prisons at your pleasure; And so we bid your Lordship very heartily Farewell,

From whitehall the fixteenth of February 1628.

Lord Keeper. Earl of Holland.

Lord Treasurer. Earl of Danby.

Lord President. Chancellor of Scotland.

Lord High Chamberlain. Lord Viscount Dorchester.

Earl Marsbal. Lord Viscount Wilmot.

Lord Steward. Lord Newburgh.

To Sir Richard Deane Lord Mayor of London.

And in the year 1629 granted a warrant for the apprehension of Humphrey worrall for the Arresting of one of His Majesties Pensioners.

In the year 1630 the like against Maurice Evans for serving a Subpana in the Court against John Durson.

1629.

16301

The like for the apprehension of Edward Clark and Samuel Farrier of Canterbury upon the complaint of Thomas Potter for abusing him being imployed in the Execution of a Warrant.

A Warrant for the Commitment of William Acheson to the Gatchouse for transgressing his Order in arresting Master Shaw and giving his Lord-

Thip no notice.

A Warrant for the apprehension of Tirrell and David Edwards upon the complaint of Richard

Eyre for detaining his Horse.

A Warrant dated the two and twentieth day of November in the year aforesaid for the apprehension of Master Morgan Goodwin, Master William Small Under Sherist of Middlesex and Thomas Brook a Baylist upon the complaint of Doctor Robotham for an arrest; Whereupon they being apprehended did the five and twentieth day of that November procure an Habeas Corpora to be brought to Carter the Messenger to whose custody they were Committed, and were thereupon Released; but presently by another Warrant his Lordship committed them to the charge of William Wattes.

The second of February in the same year the said Lord Chamberlain sent his letter unto the Sheriff of Middlesex in these words. Sir I understand that Sir John Wentworth is arrested upon an Execution at the suite of one Beeston, and now remaining in your Custody, and that some others have Petitioned me, wherein when I have found cause I have given way under my hand: if any other which have not leave shall offer to bring any Astions against him, I

do expect and require that you forbear to receive or entertain them, unless you see my hand for your

Warrant; As you will answer the contrary.

The twelfth of February 1630 granted a Warrant for the Commitment of Symon Hayton and William Taylor, for charging the faid Sir John VVentworth in Execution, being under arrest upon leave granted.

In the year 1631 a Warrant for the apprehenfion of Richard Graunt, Fowler, and John Havit upon the complaint of William Burton a mef-

senger of the Court of Wards.

The like for the apprehension of Samuel Twynn: and Stephen Symons, for the Arrest of Ralph Short 2

post Master.

A Warrant to apprehend Mafter Roger Urmifeon (an Attorney of the Court of Common Pleas) upon the complaint of Mr. Edward Crofts for an arrest without leave.

A Warrant for the apprehension of upon the complaint of Nicholas Sherman for distreyning of his goods for his not appearance at the

Marsh Court at Greenwich.

A Warrant for the Commitment of Peter Price to the Marshalfea for serving a Subpana upon Master George Ravenscroft in the Council Chamber at Whitehall.

A Warrant for the apprehension of Robert Champion a Serjeant in the Poultry Compter for taking a Prisoner from the Kings Messenger by a Writ (probably an Habeas Corpus) out of the Kings Bench.

1631.

In the year 1632 a warrant for the apprehension of John Perkins a Constable for serving the Lord Chief Justice's Warrant upon John Beard in Saint Fames's Park.

A Warrant for the Commitment of Leonard ward (a Clark of the Court of Common Pleas) and Potters a Bayliff to the Marshalseas for arresting of Edward Piget a Groom extraordinary without leave.

A Warrant for the apprehension of John Bishop

one of the Lord Mayors Officers.

1633.

1634.

In the year 1633 a warrant for the apprehension of Anthony Tompson Clark, John Richardson, and others for the arrest of George Nicholson a Yeoman of the Guard.

The like to apprehend Griffin Jones upon the complaint of John Heydon one of His Majesties Musicians for abusive Language given him, as fidling Rogue, &c.

The like to apprehend Arthur Toogood and Morgan Castle Butchers, for assaulting Mr. Pitcarnes (the Master of the Hawkes) man.

The like for the apprehension of Geoffrey Brittingham, Anthony Carnaby and William Marbury, upon the Complaint of Robert Wood for Actions laid

upon him without leave.

A Warrant to the Bayliff of westminster to forbear to admit any Writs or Actions against Sir Henry wotton Knight His Majesties Servant (sworn in the year 1627 one of the Gentlemen of His Majesties Privy Chamber Extraordinary) in the name of any Person or Persons whatsoever foever, but such as shall have leave Granted unto them under the Lord Chamberlains hand.

In the year 1635 a Warrant for the apprehension of one Matter Atkinson and divers others, for the arresting of the Lord Rich (being not long before sworn a Gentleman of the Kings Privy

Chamber Extraordinary.)

In the year 1636 a certificate for Sir Gilbert Honghton Knight one of the Kings Servants enumerating Particular Priviledges for every of the Kings Servants, viz. Not to be arrested without leave sirst obtained, not to be warned or summoned to attend at Assizes or Sessions, not to be impannelled upon enquests or juries, not to serve in the Train bands, nor to be chosen in Offices, &c.

In the year 1637 a warrant for the apprehenfion of Francis Grove of Southwark Grocer, upon the complaint of the Earl of Morton Captain of the Guard for fending his warrant (being in Commiffion for the New Corporation) for certain Yeomen of the Guard in Ordinary to compell them to

serve in Person with their Arms.

The like for the apprehension of Isaac Walter in Kent, upon the complaint of Henry Hodsal a Yeoman of the guard, for undue molestation of him, by suing of him to the Utlary, and seeking satisfaction in extremity upon his Goods and Chartels without detaining his person.

The like against Ezechiel Johnson Clerk, and John VVilcox an Officer of the Lord Mayor of London for an Arrest of Master Grimsdich of S 2

1635.

16;6.

1637.

the Great Wardrobe without leave.

A warrant for the apprehension of Alderman Andrews and of Kenelme Smith and Fohn VV right Officers of the Sheriffs of London, for the arching of Mr. Laurence Hilliard; Smith and VV right being

thereupon Committed to the Marsballea.

And in the same year a Petition of one James Goodland against John All of VVapping concerning a Debt of 400 l. pretended to be owing to him by the said John All was answered by the said Lord Chamberlain in these words, I desire Mr. Reeve to call John All before him, and to enjoyn him to take some speedy course for the satisfaction of this debt: for which if he cannot prevail with him he is to let me understand so much, whereupon I will take further Order.

In the year 1638 a Warrant was granted by the said Lord Chamberlain for the apprehension of Thomas Tyrrill, Gent. Villiam Wrynne his servant, Thomas Parker a Constable, Thomas Drew a Bricklayer, and Edward Spooner all of the Town of Newington, upon the complaint of Tucker one of the Yeomen of the Guard for being by them set in the Stocks.

Granted a warrant for the apprehension of Marriot Hewes and Carter Marsball's men for the arresting of one Mr. Beiston His Majesties Servant without leave.

And the like for the apprehension of Robert Howse and Christopher Bagehot Constables in VV are, Thomas Swinsteed Post Master, and George his Brother for setting Robert Redbury Harbinger, for the Hunts-

nicu

men of the Buck-hounds in the Stocks, who appearing were committed and afterwards Re-

In the year 1639 a warrant was granted by the faid Lord Chamberlain for the apprehension of VVilliam Barker and other Bayliffs, for the arresting of Robert Underwood a VVarder of the Tower of London, and Ordered to pay him charges which they consented unto.

The like against Ralph Atkinson of Brainford and Edward Rabone a Marsbals man for arresting of Mr. Thomas Lifle the Princes Barbor Extra-

ordinary.

And the like against Edmond Griffin of Cheapfide and Richard Stersaker for arresting of Mr. VVilliam Harbert.

In the year 1640 a warrant was granted by the . 1640. faid Lord Chamberlain for the apprehension of Feoffrey Snarpe, Hugh Osborne and William Sympson upon the complaint of Mr. Man one of the Kings Chaplains for an arrest.

The like to apprehend Humphrey Lea, Ralph Reafon and Henry Wickliffe, for arresting and taking in Execution the goods of David Porrel with-

out leave.

And the like for the apprehension of Charles Steward and William Wyamford upon the complaint of william Lenet a Yeoman of the Guard for an abuse and affront in the Streets.

That Excellent Prince, under whose authority he acted, being not only careful to maintain His Servants just Priviledges, but to avoid any ill confequences

1639.

fequences which might happen by any abuse thereof being in the year of our Lord 1631 informed that one Thomas Barnes having been Iworn one of the Grooms of His Majesties Chamber in Ordinary upon a pretence that he was one of the Company of Players, who had a licence to Practice under the name of the Queen of Bohemia's Players; whereas in truth the faid Barnes was by Profession a Carpenter, nor did profess the quality of a Stage Player, but was dishonestly and finisterly obtruded upon the faid Lord Chamberlain by the falle and fraudulent Suggestion of one Foseph Moore, that followed business in the name of the faid Company, out of a corrupt end to derive unto himself a benefit by entitling the said Barnes unto the Priviledge and Protection of His Majesties Service, and did most Injuriously seek to defraud nien of their just debts, had drawn men to be bound with him for great fummes of money and exposed them to the danger of Imprisonment: to the end therefore that His Majestie's Service might be purged from the stain of so disbonest and foul proceedings, the faid Lord Chamberlain was commanded by His Majesty to call the said Barnes, and discharge and dismiss him, and cause his name to be blotted and razed out of the lift of His Majesties Servants.

All or many of which, upon due consideration had, may shew the necessity aswell as legality of the cares of the said Chamberlain by and under His late Majesties Authority Anciently and by a long prescription of many ages vested in his and other

the Honourable Offices of the Kings most Honourable Houshold

And might more fully have been manifested if many of the Books of State, Court Memorials and Records had not in the latter end of the Raign of King James been lost by the fire, which at that time burnt the Signet-Office, and other buildings, and Repositories thereof at whitehall and by other Books of that most Honourable House; If those Sons of Spoil, Plunder and Rapine the godless party of pretending holiness in the late consusions and Rebellion, when the Frogs not by the hardening of our late blessed Kings heart but his too much trust and condescentions and the Almighties permission did go up and come into that (r) house r Exod.e.8. and into (our Kings) Bedchamber and into the vers. 3. houses of his servants and upon his people.

Whenour England was a valley of flaughter all the beauty of the Daughter of our Zion was departed, the grievous revolters and those which walked with flanders, and our adversaries were the chief in that desolate and by them misused (s) palace 9 Jer. c 6. had not lest any more then three little Books of the ver. 25.28. Lord Chamberlains Registry against their wills and Limen conceal'd and rescued from the year 1625 being tations of Jer. the sirst year of the Raign of His late Majesty of

When our miseries and troubles began to craul and ingender.

In which fmall remains those most just and necestary priviledges of the Kings Servants contained (which reason of State & the Soveraignty of Princes

blessed Memory until the year of our Lord 1641.

C

can neither want nor suffer to be disused,) do amongst other things appear to have been so moderately and prudently used and with so much reason Justice and Equity, as those books will testifie that very few of such Creditours or others which Arrested any of the Kings Servants without a licence or leave first had, being brought by the Messengers before the Lord Chamberlain, or other Great Officers of the Court unto whose jurisdiction it appertained, were unless in case of their great obstinacy and contempt committed to Prison, but with a necessary and fitting reprehension dismissed; or if upon refusal to obey that Authority to fortified and strengthned by Lawes, Ancient Customs, and reason, they were Imprisoned or committed, they were upon their first Petition and Submission as easily released and discharged from it as it would have been easie for them not to have done it or disobeyed Kingly and just Authority, or to have used but common Civility due to a neighbour much more to their Prince and Protector of all their own Liberties and Priviledges: and that the Warrants for such offendors apprehension being so sew and seldom were rather occafioned or happened to be no more by a greater Civility and respect formerly used towards the King and His Servants, than is now in the unruly and unmannerly fancies and fauciness of such as would level all the Rights of Government, and superiority to their own vain and groundless imaginations, attended by a wilful and peevish pride and ignorance or the patience or ability of those that would rather

ther endure such affronts, and pay what was demanded, than complain of the wrong done to Royal Majesty in the needless violation of His Servants Rights or Priviledges. For the Number of them in that compass of Time doth not appear to be anymore than 27 in Anno 1626-53. In Anno 1627--15--in Anno 1628--25-- in Anno 1629-21in Anno 1630 -- 25 - in Anno 1631-26 - in Anno 1632 - 10 - in Anno 1633 - 18 - in Anno 1634 - 13in Anno 1635 - 6 - in Anno 1636 - 16 - in Anno 1637 - 14 - in Anno 1638 - 27 - in Anno 1639 - 19in Anno 1640. which in fo great a number with their Servants and Retinues amounting to a far greater number than 1000 or 1500 of His Servants which are in the Checque Roll or pay of the Greencloth or Treasurer of the Chamber, besides not a few extraordinaries and fuch as have no pay or quarter, as they Terme it, attending upon the King and His Officers in His House or Palace should not be enough to stir up any envious or causeless complaints against that part of their Priviledges, not to be Arrested or Imprisoned without leave first granted.

Which can be accompted no less than necessary, when the leave demanded to prosecute or bring Actions at Law may be to Arrest or Prosecute levi malitiosa vel injusta de causa, upon some trivial or unjust pretences; and their desires not sit to be assented unto; when it may be for some little stroke push or Blow given by the Kings Porters, Servants, Marshals or Marshals-men, or other His Attendants to Repel or Keep Back a Crowding or unruly mul-

T 2

Solemnities or Assemblies at the Kings Court or Palace (which is so often done as by a Statute made in the 33 year of the Raign of King Henry (1) 33 H.8 (t) the eight, which ordained the loss of the right hand of any striking or making bloodshed within any of the Kings Houses or Palaces or the Virge thereof (there is an Exception to the like purpose) or for the Heralds or Kings at Arms legally throwing down or breaking the usurped Hatchments or Coats of Arms of those who should not have been fo proud or impudent as to have been guilty of it, or for Monies already fatisfied, and the Bonds or Bills not taken up or Cancelled or Shopbooks not crossed, and the Money paid not entred, or for Taylors, Exchangemen or other Trades mens stretched and over multiplied reckonings beyond either Justice or Truth, (who are many Times the more willing to Trust whereby to gain the opportunity of reckoning as they please,) or for a Licence to enter upon, and bring an Action of Ejectment to recover the possession of some Lands Mortgaged for security of pretended and falle reckoned Debts and Forfeitures, and extremities beyond right reason and equity endeavoured to be put upon them by some small conscienced men abundantly versed in oppression, or by some naughty and greedy Trades-men

(for all are not to be ranked with them) who can fawn and creep and make friends to the prejudice of other Shop-keepers and break the tenth Commandment in the Decalogue, to gain their worships Custome, and when they have well wrapt

them

them in their largely reckoned Items, make it their humble fuit to have some bond or security by some friends to be bound with them, or a Mortgage or Recognisance in the nature of a Statute Staple; but when they have it by a late trick or cunning, now much practifed, affign as foon as they can those Bonds or Securities, if they be not originally taken in some of their friends or acquaintance names, unto some who shall abundantly and with all the Rigors of the Law profecute them, and their Estates, and will then notwithstanding alleage they cannot help it, they were forced, if any can be so far fallen out with their understandings, as to believe them to borrow Money or fatisfic others upon that Security, or be undone or go to Prison, and hope notwithstanding they will continue their custome, and take such commodities as they need of them, and being by themselves or Counterseit Assigns become Masters of their advantages, and swelled in their own conceipts to an Empire or Command over a turmoiled impoverished, and over burdened Debtor, will not only catch all opportunities of keeping their extended Lands at an usual undervalued rate, but if not restrained, be more merciles than fome ship-racking Rock, and more fierce and Cruel than some hunger bitten Banditties affisted. by the encouragement of some desolate or unfrequented places, or then some destroying Herecano in the Indies or America, and Rail and Clamor if they may not tear them and their Estates in pieces to satisfie their impatient and unjust designs.

defigns and demands; and where they have taken or seised any of their goods Chattels or Housesholdstuff, upon Executions taken out upon two or three, or as many more Judgments with great penalties as they can intangle them by lending a little more Money, or upon an account or new made reckoning infnare or feduce them into, can cause them not only to be fold and bought again, by some of their Vulture acquaintance at far undervalued Rates, but reckon charges never laid out or disburfed, or blown up by the wasting and Lavish expences of Bayliffs and Carchpolls amounting to as much Ravage and spoil as a Kennel of Hounds would make in a Pantry, or the incursions of the rude Tartars, and Savage Cossacks do not seldom bring upon their more Civilized and unfortunate Neighbours.

So as a Lord Steward, Lord Chamberlain, or other great Officer of the Kings houthold cannot be rationally adjudged to have done amils, when in Compassion or Justice in the case of the Kings Servants he thall moderate the suries and unjust pretences of unrighteous and unreasonable Creditors or Complaynants; and according to the Laws and reasonable Customs of England, and the Kings most Honourable Houshold give them and the Kings Servants a just and fitting protection respite or time of Respiration, the rather if he find that some of their wants and distresses either would not or could not so quickly or heavily have fallen upon them, if the publique necessities and occasions had not for the Protection and safe-

guard

guard of those very Creditors or Complainants (comprehended in the universality of the people) drawn away from the King the Money which might have enabled him to a more Regular and Ordinary way of paying them their Wages, Salaries or Pentions.

And should if right be done unto it, give a less cause of disturbance to the Will or Fansies of those who would have it otherwise, than the course generally well approved, and now holden in the City of London, in the Lord Mayors Court, called the Court of Requests, or Conscience, Indulged at the first by no greater Authority then an Act of Common Council, made by the Lord Mayor, Aldermen and Common Council of that City, about the ninth year of the Raign of King Henry the eight, continued by some other Acts of their Common Council, and strengthned by some Subsequent Acts of Parliament, where upon any Action Commenced in the Sheriffs Courts of Guildhall London, whereby any debt under forty shillings is demanded of any Freeman of that City, the Defendant may before or after Verdict mark it, as it is there Termed in a Clarks book attending for that purpose the Lord Mayor in his house, and by that manner of transferring the Actions or proceedings before his Lordinip in his Court of Conscience, procure as much of it as he shall be able to obtein with an Order in case of Poverty or weakness of estate to pay it by Six pence or twelve pence a Week or some other small manner of payment, the Plaintiff being to be Arrested or Attached

Attached, if he shall disobey or transgress his Lordships moderation therein. And such or the like Moderations may Aswell be allowed to the Lord Chamberlain and other great Officers of the Kings most Honorable Houshold, in the case of the Kings Servants, as it is, and hath been to the Judges of the Courts at westminster, in the case of all the Subjects of England, where in Order to the Salvo Contenemento the faving the Reputation, and support of failing or fainting Debtors or Defendants, and the Moderata Misericordia, Moderation in punishments, which in the reconciling of Justice and Compassion is not only Injoyned and Pattern'd by our many Excellent Laws and reasonable Customes fince the Norman Con-11 L.L. Cans. quest, but ordained (u) by a Law of King Canutus many years before in his direction to his Judges, Ut in mulcta Irroganaa (w) adhibeatur moderatio, ut ad divinam Clementiam temperata hominibus tolerabilis effe videatur, that in Punishments or Penalties there be such a moderation as may resemble the Divine Clemency or compassion, and be the more Tolerable for men to bear it: from whence or the like Dictates of Right Reason have Issued, and been warranted, the Authority of those Sage Expounders of our Laws, and distributers of Justice in their Remission of Penalties of Bonds and Obligations, Moderation of Costs and Mitigation of Penalties, stay of Postens Verdicts and Executions, Arrests of Judgments granting Imperlances, Lessening of Fines incertain in Copyhold estates, and giving them a reasonable Time of payment, disappointing

CAP. 2. w Glanvile 1. 9. c. II. Coke 2 part Institutes Commen'. in Magna Charta, c.8. 140 29.

of Rigors, Extremities and Oppression, by the relieving of the Oppressed; wherein the wisdom of our Laws and the discretion and Office of Judges and Courts do very often in some or other of those and very many other the like well regulated. Acts of their prudence care and authority, which might be here instanced, bless and

Such or the like Princely Cares of our Kings

make happy this Nation.

and Princes for their Domestiques or Servants faithfully serving and attending upon their Soveraign, giving us the reason, why, above three hundred and forty years ago ( ") when Fleta u Fleta lil. 2: wrote his Book; It-was the Custom of the Aula cap. 3. Regis, the Kings Palace si de aliquo familiari (i.e.) famulari Regis fiat querimonia, if a Complaint should be made of any of the Kings Servants or Houshold, he should be summoned to answer, and if he came not at the day prefixed, he should be Attached (which is by surcties or pledges, or some of his Goods or Chattels taken, whereby to compel him to appear) and another day prefixed, and if he did not then appear, his body should be taken, if he were personally fummoned within the Virge, and should be brought before the Steward; and the Marshal, having him in his custody videlicet sub tali loco partito secundum Legem & consuetudinem Hospitii in a place to that purpose according to the Law and Custom of the Kings Houshold appointed, was to be answerable for him; quod nist de corpore respondeat de petitione satisfacere tenebitur supposito quod

de corpore fuit feifitus; but if the Marshal did not keep him in Custody whereby he might have his body forth coming, he should if he was ever seised of his body make fatisfaction to the party complainant: But where any person who is not of the Kings Servants or House should delire to sue or prosecure a Debtor in the Court of the Kings Palace before the Steward thereof, he was to produce the Bond wherein the Debtor obliged himself ro their Jurisdiction: and in that case the Debtor was to be destrayned until he found pledges to answer the Action, Et si Pleg. invenerit & quinquagesimum diem litis receperit & illo die non comparuerit, and if he should find pledges and not appear within fifty days after (for fo many days it feems was then allowed unto him, he was to be Arrested and detained until he gave Bail, it being also as reasonable that a like or a greater time should be given to one of the Kings Servants complained of before the Lord Steward or Lord Chamberlain or other great Officers of the Kings Houshold, to whose Jurisdiction it belongeth) for in those more Reverential Times and acknowledgments of Superiority; It was a Rule as well as an Ancient Custom that mitius agendum cum familiaribus & servientibus Regis dum tamen Domestici sint Regis & Collaterales, the Kings Servants in Ordinary and Domestiques were to be more gently and respectfully dealt with then strangers, & quod primo debent per Mariscallum summoniri quam si superseaerint tum primo Distringantur & tertio si necesse fuerit Attachientur . and ought first to be summoned by the Marshal, and if then they did not appear they were to be Di-

Pleta lib. 2.

Fleta lib. 2.

eap. 63.

freined.

freined, and at or after the third diffress if need were should be Attached, Et hinc est quod reulgariter dicitur qued servientes Regis sunt Pares comitibus, and from hence it is faith Fleta, that it is Commonly faid that the Kings Servants are in that Respect Peers of the Earls, and are upon Actions or Complaints of Debt or other personal Actions (y) in the awarding of process in the y Fleta. appropriate to the Kings House or 1. 2.6.3.

Palace to enjoy the like Summons or respectful

Ufage.

But if there had been no fuch Custom or Priviledge in the former ages, there is now and hath been for some years last past a greater necessity, and reason for it then ever; when any of the Kings Servants being made a Defendant, by feigned and fictitious Actions or Writs called Bills of Middlefex or Latitats Issuing out of the Court of Kings Bench, in placito transgressionis upon a supposed Action of Trespass as great as the Plaintiffs malice or defigned oppression to ruine, and lay unjust Actions upon him can invent, and a late imaginary supposed custom with an ac etiam or suppofition of an Action of One thousand, or ten, or twenty thousand pounds added in the same Writ or Action to be afterwards (viz. when the Plaintiff pleaseth) exhibited against him may be cast into Prison and overwhelmed with such Complainants pretended Actions, his friends fo affrightned as they dare not bail him, if they were able, his service lost, and his livelihood under his Sovereign and gracious Master taken away from him,

him, and our Kings of England by such Plaintiffs and their untruly suggested Actions reduced to as manifest dangers by Arresting or taking away their Guards, or Attendants from them, when he shall go or ride abroad, or be recreating himself, in hunting, or other disports; as King James was by the wicked Earl Gowries Trayterous purposes to Murder Him, by sending His Servanrs the wrong way, and telling them that the King was gone before another way: and when such Illegal and unwarrantable Writs may have neither cause or evidence, or may be for an inconsiderable or small summe of Money, or perhaps none at all due unto them; And have been of late fuch Midwives to wicked Defigns and Contrivances as a Married Woman hath been by the confederacy of her Husband, and the Arresting and Imprisoning her Servants by fuch Counterfeit Actions, enforced to leavy a fine, whereby to pals away the Inheritance of her Lands of a great yearly value, which was after Reverfed by Act of Parliament; and a Gentlewomans house in S. Martins Lane in the fields neer London Robbed by Arrefting of the Mistress of the House, and those that were in it by such Bills of Middlesex: for which the Cheater that contrived it was not long after deservedly hanged.

And furely fuch a priviledge, claimed by the Kings Servants in Ordinary, needs not be so quarrelled at, when in the great Case which happened in Anno Dom. 1627 being the third year of the Reign of King Charles the Martyr upon Habeas

Corpora's

Corpora's brought by four or five Gentlemen, who were Imprisoned per speciale mandatum Domini Regis by the Kings Special Command fignified under the hands of eighteen Privy Councellors, for not lending money to the Publique necessities (when they were very able to do it) concerning the Arrest or Imprisonment of any of the Freeborn People of England by the Kings Warrant or Command without a cause Expressed; Whereby the Judges upon a Habeas Corpus might enquire and Judge of the cause of such Imprisonment, and give any of his Subjects their Libertys upon Bail to Anfwer the Action where the Law allowed it; the many and claborate Arguments made on those Gentlemens behalf, in the Court of Kings Bench by feveral able Lawyers, amongst which was that skilful Diver into our Common Laws, Antiquities, Records and Presidents, the Eminently Learned Mr. Noy, who except the Great and Learned selden brought as Great an Ingeny and Intellect to the study of them, and a more solid and Penetrating wit and Judgment, then any or many an age hath yet produced, could not keep the faid Gentlemen from being remanded back to the Prifons from whence they came, or hinder the opinion of the Judges of that Court; amongst which was the Right Learned Justice Doddridge, upon view of the President in the case of Edward Page in the seventh year of King Henry the eighth, committed to the Marshalfea by the Lord Steward of the Kings House, who being afterwards upon an Habeas Corpus brought before the Justices of the Kings.

Kings Bench was remanded; and the like in the Case of James Desmeisters committed to the Marshalsea of the Kings Houshold per concilium Domini Regis by the Kings Privy Council, that those Gentlemen could not be Bailed and that by some Pesidents in many Cases, where men have been Committed by the Kings Command, when they have been discharged by that Court, it hath been upon the Kings pleasure fignified by His Attorney General, or otherwise, that which Sir Robert Heath Knight the Kings Attorney General then alleaged for the King in his Argument, in that Case, not being denied to be Law, or presidented, either by the Judges or the Council on the other fide that multitudes of Presidents might be shewen (2) wherein men Imprisoned for contempts of Decrees in the Courts of Chancery or Requests, Courts of Exchequer and High Commission, or by the Corporations or Companies of Trade in their Domineering By-laws or Ordinances were not bailed upon their Habeas Corpora's, and that in the Case betwixt the Bakers of London, where they Fined, and Committed men to Prison for not paying of it, ( and the like not feldom done by the Corporations and Companies of Trades in London, and the lesser fort of them as of the Watermen, &c.) Thomas Hennings and Litle Page being Imprifoned in 11 Jacobi Regis, when they brought their Habeas Corpora; and the cause being shewen to be by reason of an Ordinance or Constitution of the Lord Mayor of London, the Prisoners were fent back to abide his Order: in which grand Case of the Habeas Corpora that Pious and just King did not

Z M. S.
Of the Arguments in the Case of the Habeas
Corpora.

not, as Oliver that Canker of our English Laws and Liberties did in the Case of Mr. Cony the Merchant, Imprison or Terrifie the Lawyers which argued for them, but in the Expectation and hopes of a better effect then afterwards hapned upon it gave them as much Time and Liberty of Search and Arguments against His Royal Prerogative in that particular as they could defire: and those very Justices of the Kings Bench, being in the next year after called before a Committee of Lords and Commons in Parliament, to declare their opinions concerning those proceedings; And afferting their opinions, Justice whitlocke being one of the said Judges, denied that there was any Judgment therein given, whereby either the Kings Prerogative might be enlarged or the right of the Subject Trenched upon, that if they had delivered (a) them presently it must have been be- a Rushworths cause the King did not shew cause, wherein they Hift. Collett (bould have judged the King had done wrong, and 505,506, this was beyond their knowledge, for the King so7. might have committed them for other matters then they could have imagined; and if they had bailed them, it must have reslected upon the King, that he had unjustly Imprisoned them, and that the differences made in the Arguments of that Case betwixt remittitur and remittitur quousque remitted or remitted how far or unto what Time he confest he could find no more in it; but that they were new inventions to trouble old Records, and Judge Doddridge faid, that for the difference betwixt remittitur and remittitur quousque he could never find.

find any: he had fate in the Court fifteen years, and Should know something surely, if he had gone in a mill so long (some) dust would cleave to his Clothes.

And in the Petition of Right granted in the next enfuing year, in the framing and procuring whereof Sir Edward Cook that Venerandus senex & investigator legum Anglia very Reverend and great Lawyer whose Learned labors after his discontent for the loss of his place of Lord Chief Justice of the Court of Kings Bench, and the former favors of King James tended as much as he could for the finding out and publishing of every thing that might advance the Peoples liberties, but as little as might be for the Kings Just Rights and Prerogative) affished by that great Monarch of Letters and Learning Mr. Selden, the Excellently Learned Sir Edwyn Sandys, Sir Robert Philips, Sir Dudly Digges, Knights, and other great Patriots, and well wishers to the Peoples Liberties, there was nothing omitted of their care and industry in the fearch and scrutiny of all that could be found of Law, Learning, Reason or Precedents to support the Subjects claims therein or effect their defires; There is no restraint of that just Legal and very b Vide Peti- Antient Priviledge of the King and Queens Sertion of right vants not to be Arrested or Imprisoned without affented un- Licence or leave first obtained of the Lord Steward, Lord Chamberlain (b) of the Kings Houshold, or those other great Officers of His House or

Court to whom it appertained; nor any thing

directly or confulto urged against that necessary

toand granted by the King 26 Tune 1628.

part

part of the Duty of Subjects to their Sovereign or

Respects to Him in His Servants.

Nor in that fatal Remonstrance made by the House of Commons in the after long and over lengthened Parliament the fifteenth day of December 1641; wherein every thing that could be imagined or had but a face of a grievance in the government (c) was too industriously amasted or mustered up, c Vide Colwas there any complaint of the Protections granted lection of by the King or Priviledge of the Kings Servants in Declarati-Ordinary from being arrested without Licence ons in Parfirst had.

Neither in those high and mighty undutiful and unchristian like nineteen Propositions sent to His late Majesty in June 1642: whereby they denyed him the care and education of His Children, office of a Common Parent to His People, and a natural Father to His Children, and would have gained to themselves or taken from him His Kingly Authority, is there any thing in that particular complained of, or defired in remedy of that fince supposed evil: But that assembly then called a Parliament, were so far from hindring it, as when they were afterwards Petitioned by divers Creditors against their own Priviledges, and the Protections of themselves and their Servants, they were pleased to answer that they would take it into their Confideration, but in many years after were so busie in the Ruine of the Kingdom and a Purveyance of Places of honor and profit for themselves as the People had then, and may yet have, reason to believe they never intended to do it.

And

And were so unwilling to have some Prisoners Committed by them to be discharged by Bail upon Writs of Habeas Corpora as they belpoke it for their Priviledge to Commit Matthew Wren the late Bishop of El, and let him continue 16 or 17 years a Prisoner in the Tower of London without thewing any Cause or making any Charge against him under a Colour and Pretense (never to be justified) that the Legislative Power and Soveraignty was Inherent and Radically in the People, who had delegated and entrusted it unto them, as the Animatical and unknown Keepers of their Liberties, whereby as they imagined their Commitees and Sub-commitees might take as Extravagant Liberties as themselves : insomuch as when Mr. Edward Trußel a Loyal Citizen of London about the year 1643 brought his Habeas Corpus to be bailed upon that Parliaments Commitment for not payment of the twentieth part of his Computed Estate, Serjeant John wilde and Mr. Hill two Members of the House of Commons, of the then miscalled Parliament, came publickly to the Judge fitting in the Kings Bench, and took fuch a course by Whispering, and delivering Messages to him, as the trembling Judge calling God to witness how willing he would be to do right and be afraid of no body, declared it for a kinde of Law that he could not Bail any man where the Commitment was by fuch a Soveraign Court as the House of Commons in Parliament.

Who believed it to be so great an Incident and necessary requisite to their usurped Government as they did about the year 1645 Imprison a Citizen of London for Arresting a Nobleman of Germany for some Wares Trusted, when he was but in the Company of some of the Parliament so called Members as they were going unto or coming from one of their Sumptuous or Thanksgiving Feasts or Dinners, for success in their evil Actions.

And Oliver Cromwell their man of fin, great Captain and Master of as much Perjury as he could himself Commit, or drive others unto, found it to be so necessary for the maintenance of His pretended State and unjust Authority enforced from the True Proprietor, as he was pleased so to Indulge and Protect His Menial Servants with the like Priviledges; as one Mewes who attended him could not be Indicted for perjury without Licence first obtained, and one Captain william Sadlington having taken from a Dutch Merchant, Residing in London, Goods or Merchandise at Sea to the value of fix or feven thousand pound, or endamaged him as much, and coming afterwards into England, and for some special service done to that Protector of Mischief and Evil Designs, being made one of his Domestiques or Servants in Ordinary, the Dutch Merchant Commenceing an Action at Law against him for what he had lost and was damaged, and caufing him to be Arrested, was not only with the Bailiffs that Arrested him Imprisoned, but enforced before he could have his Liberty to discharge the said william Sadlington, and Release his Action. And some of his Major Generals

their Oliver and themselves protected his and their Menial Servants, and extended the freedom from Arrest until leave or licence obtained as far as their Common Red-coated Souldiers; and how much those Major Generals in their several Provinces did in other things all they could to Stisse the Law and Domineer over it's proceedings, one of them Threatning to Hang up the Lawyers Gowns in Westminster-Hall as the Colours and Ensigns of their once dearly beloved Covenanting, but afterwards ill required and bea-

ten, Stots brethren had been used.

For to Ask or Petition for a Licence or Leave of the Lord Steward, Lord Chamberlain or other Great Officers of our Kings Houses or Palaces, to whose Jurisdiction it doth belong, before any Arrest or Prosecution at Law can be had against any of the Kings Servants, is no more then our Laws well Interpreted do order and enjoyn to be done in all Actions, Civil, Real or Personal, against Private and Common Persons, or such as are not the Kings Servants; for if the Action be laid or entred in the Court of Kings Bench, it is to be made Returnable, Coram Domino Rege, before. the King himself, who by the Justices of that Court Affigned to hold fuch Pleas as the King in the Conftitution and fixing of the Court of Common Pleas reserved to be heard by himself or those affiftant Judges is supposed to Hear and Determine fuch causes as are proper for that Course or if the Action be defired to be Tryed in

the Court of Common Pleas, upon the Kings Original Writ which may, as it was by the Franks, not unfitly be called Indiculus (d) commonitorius, d Bignonii A Monitory Letter or Writ of the Kings Islning note adi liout of the High Court of Chancery under the brum Ma-Teste me ipso or witness of the King himself, and is roulfi de forto be fued out giving the Justices of the Court of Common Pleas, which is the Legal and Proper Court Ordained for such matters, a Warrant, Power or Commission to hold Plea therein; for otherwise saith Fleta, nec Warrantum nec 7urisdictionem neque cohertionem habent supposeth a Petition of the Plaintiff to the King as the Supreme Magistrate for a Debt (e) or Summe of e Fleta, lib: Mony unjustly deteined from him, or some 2. cap. 34. Trespass or Damage done unto him, for which he cannot Sue or Profecute without a Writ Remedial or Original, granted by the Lord Chancellor or Lord Keeper of the Great Seal of England, Commanding the Sheriff of the County or Place, where the Plaintiff layeth or defireth to try his Action, if it be in Debt, to take security of the Complainant for the proof or making good of his Action, and to Command the Defendant or Party Complained of to pay the mony demanded; and that if the Defendant do not pay the Mony upon the Sheriffs or his Officers or Bailiffs coming to him, then they are to Summon him to appear before the Justices of the Court of Common Pleas at westminster, at a Return or Certain time prefixed, which at the least is to be fifteen days after the Teste or Date of the Original, and many X 3 Times.

Times with a Longer Return, and as many more days given if the Original be sued out but fifteen days before the Terms of S. Michael and Hillary, Easter or Trinity Terms; but of it be procured or fued out in the later end of a Michaelmas Term, and returnable Octabis Hillarii, will have more then fifty days betwixt the Teste and Return; and if sued out in the end of an Hillary Term, returnable the first Return of an Easter Term following will have no less then 60 days betwixt the Teste or Date and the Return; or if it Issue out in the end of a Trinity Term returnable the first return of a Michaelmas Term following, will have no less then one hundred days betwixt the Teste or date thereof and the Return, and more if it be in any of the later Returns of any of the said Terms, in all which if the summons had but fifteen days betwixt the date of the Original Writ and the time prefixt, the Defendant hath by intendment of Law for much Time or Respite for the payment of the mony in the shortest prefixion; but a great deal more in those which are longer, which by the reafon and equity of our Laws is not to be understood to be easie or probably upon the Instant of the Sheriff or his Officers Commanding the Debtor to pay it, but upon a reasonable and possible Time betwixt the Tefte and return allowed for the payment thereof, very Rich and sufficient able men not having always so much mony at hand to pay at an instant, and the monyes demanded do many times in the end of the fuit although it be not upon a bond or bill with a penalty or doubling

of the summe appear not at all to be due or for som e or a great part thereof to be unjustly required; and if upon a Bond or Bill with a forfeiture doubling the principal Money, or in an Action of Covenant, Detinue, Annuity or Accompt, cannot think it just or reasonable presently to pay as much Mony as an unjust Complainant will not feldom, if he may be his own Carver, exact of him: and in all Actions Personal whether it be for Debt or Damage some part of the time between the obteining the Kings Licence or leave to Sue in the Case of those which are not his Houshold Servants, is between the Teste and Return of the Original, necessary to be imployed for the Plaintiffs giving to make good his Action; for more, but never less our Ancient Records do often mention, until some of our later ages, and the Judges thereof fince the Raign of King Edward the fourth in favour of the Disabilities and Inconveniencies which might happen in the Cases of many of the Common or Impoverished fort of people, who otherwise would be debarred from the Justice which our Laws intended them, were content to dispense with it by reteining only the reason of the Law and allow of the Sheriffs Indorfing and Returning upon the Writ the feigned names of John Doe and Richard Roe for the Sureties put in by the Complainants to make good their Complaints or Actions; who being before hand nor a little furnished with their weapons of offense may without any difficulty not seldom suddenly surprise the altogether unprepared

prepared Defendants; our Laws not without cause believing it to be possible that Rich men might oppress the poor, and that it is many times, easier to offend then to defend : and therefore that way of Inforcing the Plaintiffs to give Sureties or Pledges to profecute their Actions was heretofore so strictly observed, as if no Sureries or Pledges to Profecute were put in by the Plaintiff, he could not profecute the Defendant at Law; and if he made not his Action or Complaint appear to be just, had in those more Legally Thrifty Times for the Kings Rights and benefit a fine fet or Imposed upon him by the Judges pro falso clamore for his causeless accusation, which doth frequently occur in the fine or Iter Rolls of the Judges of Affise in the Raign of King Edward the first and was Estreated and Returned into the Exchequer to be leavied upon his Lands Goods or Estate. And all that or some of that which was complained of, being not always likely to be true, would not think it just to give them leave to Arrest or Hurry the Defendants to Prison, as their Pride, Malice, Cruelty or oppressing Designs should incite them, without some pause or Interval which many times cooleth the fury of mens rage and Impetuolities in the pursuit of their causeless anger or malice, or by some other way or means lays aside their intended Law Sute, our Laws in the favour shewed to Defendants imitating therein the Civil Law (from whose Excellent and largly streaming fountain much of their reasons and Maxims are borrowed and derived) which in it's Practice and Tenets

is favorabilier ree quam Actori, respects more the Defendant than the Plaintiff; Actor quippe potuit omnia negotia ex confilio componere antequam reum vocaret, for that the Plaintiff hath commonly made all his matters readie, before he complains of the Defendant, or cites him to appear to his Action, reus vero quadam necessitate comparendi fibi imposita, ita facile sape non potest sibi consulere, ut pro voluntate que vult exequatur; but the Defendant having a necessity put upon him (d) to d Greg. Tholas. appear when he is summoned, cannot in that syntagmate time so well provide for his defence, as to do, or cap. 1. Sect. 18. perform, what he otherwise would do, which may be the cause, that apud Romanos Lege cautum ut Accusatori (which was then in Civil, as well as in Criminal Cases) in foro (e) hore fex ad dicen- e Plin. secundum reo vero novem ad defendendum darentur, a dus lib. 4. E-Law was made by the Romans, that the Accuser pift urfo fuol should be allowed fix hours at the Barroor in a Court of Juffice, to charge the Defendant; but the Defendant was for his defence to have nine, that apportionment of time being afterwards contracted and abridged by Cn. Pompey, unto two for the Plaintiff, and three for the Defendant; and long before that, amongst the Athenians and Lacedemonians, fuit constitutum, ut aqualibus votis super vindicando facinore (f) in diversa trabenti- & Alexander ab bus pro reo judicium staret quod videbatur aquissi-Manndro Ge-mal diernm, mum, it was their Law or Custom, that where in lib. 3. 25. b. a Case betwixt the Accuser or Plaintiff, and the Defendant, the Votes of the one fide, and the other, fell to be equal, they held it most just or

g Hengham

equitable to ablobye or free the Defendant, and for that, or the like reason, it was, that Judge Hengham faid in the Reign of King Edward the magna, cap. 6. first, quod Curia Domini Regis neminem decipere vult, that the Kings Court of Justice would not have any Defendant to be surprized or deceived, that by the Statute of the 51. of King Henry the third, the dayes or Retourns in the Court of Common Pleas in Real Actions for Lands, had fo long a time allowed, as from the Octaves, or eight dayes after Michaelmas, which as to the day of appearance, is about the 9th. day of October unto the Octaves or eight dayes of St. Hillary, which is as to the day of appearance, the 23. day of 7amary next following, and of five Retourns in Dower which concerned only an Effate for life, from the Offaves or eight dayes of St. Hillary, which is the 23. day of January, unto quindena Pascha cor fifteen daies after Easter, which in most years doth happen about the middle of April next following, and by the Statute of 32 H. 8. cap. z. daies were given in real Actions retornable in Octabis Sancti Hillarii, unto Crastino Sancta Trinitatis, which is more than four months. And that there are and have been, to the intent that according to our Magna Charta the Defendant as well as the Plantiff should be heard before Sentence or Judgement given, those Indulgencies of Essoins de malo vemendi, that a Defendant could not coveniently come, or of malo letti, that he was fick, &c.

Such Licences or kind of leave, before Actions begun

begun or profecuted, being to effential to a right distribution of Justice, as antiently the parties could not compound or agree an Action or Suit depending, without a Licence from the King to agree, as it is yet in praxe, in the course or manner of leavying Fines upon Writs of Covenant for a certain fum of money called by the name of the Kings Silver, paid to the King upon the prafine, and another fum of monie also upon the Post-fine, and sometimes, though now altogether dif-used, upon an Action of Debt, for no greater a fum of monie than ri L and fome odd monie: nor could the Plaintiff upon any mistake in his Action, amend the matter, or bring another Writ, without a Petition or Request ut recedat a brevi. that he might for fake that Writ or Action to purchase a better, all the pleadings at Taw where the obtaining of a Writ is mentioned, alledging that the Plaintiff impetravet breve, did Petition for that Writ, and the special awarding of very many of the Writs and Process of Law being in the word petit breve de inquirendo de dampnis, &c. that the Plantiff prayeth that he may have a Writ to inquire of Damages, &c.

And was not without the pattern of ancient daies, and the reasons that guided or conducted them unto it, when in King Davids time, as we may read in the Conspiracy and Rebellion of his Son Absoloms, the people were coming to David cap. 15. with (b) with their Petions for Justice, and Et Sigonius de there were amongst the Hebrews, or people of If—Repub. 116. 7. rael (God in his most righteous Laws to that ap.3.8 cap.7.

Nation

Nation which Moses afterwards told them farr i Dent. 4. v.8. (i) furpassed the Laws of other Nations, ordain-& 25.v.1,8 2 ing ut ex prascripto res Judicarent, that matters of Controversie should be judged according to certain præscript forms and rules) a certain formof Magistrates, called Grammatoisogogei, which prefided over the Judges, qui causas que ad se deferrentur, who received Petitions for Justice, recipere vel rejicere possent, & quas recepissent ad Judices introducerent, and having authority to receive or reject them, did deliver to the Judges those which they approved, to which custom or course, that speech of our Saviour Christ in the 12th. Chapter of St. Luke alludeth, Cum vadis cum (k) Adversario tuo ad Principem in via da operam liberari ne forte trabat te ad Judicem, when thou goest with thine Adversary to the Prince, (or Magistrate,) as thou art in the way, give diligence, that thou may'ft be delivered from him, left he hale thee to the Judge. And the Athenians having afterwards used the like, the Romans, their wise Imitators, confidering that hominem homini Lupum effe verissime dici solet, men are too often Wolves to one another, & cum vita nostra ob corruptam naturam sine litibus transigi non poset melius erat Judiciorum formulas introducere, quibus Judice cognitore homines disceptarent quam ferre quod quotidianis dissidis ad armaco rixas profilirent; and the life of mankind by their corrupt nature, could not be without some Suits or Controversies, it would be better to introduce certain forms of Laws in the proceedings thereof, by which by the Judges ap. pointment, noits

Luke 12. v. 38.

pointment men might manage and frame their actions and fuits, than to fuffer men to fight and brawl one with another, did ordain that nemini liceret in judicio experiri nisi impetrata prius agendi formula a Collegio Pontificum, No man was permitted to profecute another at Law, until he had obtained a form or direction for his Action from the College of Pricits, who were then as the Priests amongst the Hebrews, the most learned and experienced; afterwards the Pretor or Lord Chief Justice, or Juris Civilis Custos Guardian or Keeper of the Law in the time of their republique had authority actionem dare, to allow of the action, or negare to difallow it, and prohibited any Action to be profecuted against a Parent or Children, or against a Patron, or the Parents (1) Oldendorpius Children, soof a Patron, fine permiffu fuo, without his licenfe: lemnitatibus, But afterwards when that imperious miftrefs of aquisimum in the world was married to the Cafars or Roman fruit. Monarchy, their Emperors, as Dioclefian and (m) m Alexand. Maximian, Gordian, Valerian, and Galiennes, and Genal dierum, their fuccessors, did by their Rescripts gof which lb. 1. eap. 15 infinite examples faith Briffonius (n) might ben Briffonins instanced, allow of their Petitions for Debts, Tref- lib. 3. 280, pals, or other matters before they were remitted 281, 282, 283" to the Judges appointed, and thinks that the ori- Bignonii ginal of that Culton came ub ultima antiquitate not a ad librum had a long before and very antions foundation formul. 512. Et apua (o) Francos, amongst the old French there & in lib. 1. appears to have been antiently the like address to Marculfi fortheir Kings for Justice before they were recome passimin mended to the Judges bue xer , and and in orth roden libro.

And howfoever by the favour of some of our later Kings, and their Subordinate Courts of Juflice for the ease and expedition of the Subjects in their fuits and actions, as they can now of courfe, (as it was acknowledged to be in the Reign of King Edward thein: ex gratia curforia, by an indulged course, as they call it, out of the Courts to whose Intifdiction it belongeth) take out writs and process to arrest and profecute as they shall have occasion, without the observance of those good and wholfome former rules and directions of out Laws; yet there is no record or proof to be foundthat any of our Kings have fo far indulged those courses, as to release in that particular the rights and privileges of themselves and their fervants in that necessary and well-becoming enforcing of leave or licente first to be had, before any action or fuite commenced against any of their fervants, which the Laws and reafonable Cuftoms of England derived from the rational Laws and Customs of so many wife and prudent Nations flanding yet in force and unrepealed, or unabrogated did and do yet intend and direct to be used in the case of all other men that were not the Kings Servence, veril evoled attract rento to alla

in Capita of and by Knight fervice of Tenures whereof they ought to observe in choice fervices obliging a gratitude as long as they hold those lands in sobenesiciary a manner. Which do taxis quam offibus barere, fix and begome inherent, and

25

as it were connatural to the Lands, would if our Common Law should be filent, and there were no Antient Customs or usages to direct it, injoyn an observance and respect towards their fellow fervants, as much as is now claimed in that particular by the Kings servants, not to be arrested. imprisoned or molested in their Persons or Eflates without leave or licence first obtained of their Sovereign; for if any fought to diffurb their service or quiet, before that late unhappy conversion of those Tenures into free and common focage, which our fers nepotes and posterity will, as may justly be feared, rather lament with the weeping Prophet Feremy, than have any the least cause or occasion of rejoycing or taking any comfort in that their supposed freedome or acquest, they would not only have been defervedly branded with that most infamous, and in it felf a worse than Pilloried note of Ingratitude, but where the Civil Law and the reason of it could reach them, be lyable to the forfeiture or loss of the Fee or Land holden; and therefore it was that those feudatary Laws, which have gained fo great a reputation and entertainment throughout all Europe, the most civilized and well-governed quarter or fourth part of the world, and extended it felf into fome confiderable parts of the other three, as far almost as the habitations of the wild and favage part of them, did adjudge Vasallum ob feudarii juris inficiationem proprietate feudi mulctari, That a Vaffal or Tenant by Knight-fervice, may, if he deny the rights and observances

observances due to the Lord of the Fee, be de prived or puhished by the loss of it; Er contumap Choppinus de cia (p) quodamodo inficiationi foudi equiparatur ex

de domanio Francia, lib.3. 524.

qua ingratus cliens ipfa etiam mulctaretur fundi protit. 2. 523, & prietate Clientelaris, and a contumacy or contempt of the Lord, of whom the Client or Tenant holdeth his Land, is somewhat like to the derival of the Lords Rights, whence it is, that an ingrateful Client or Tenant may be punished by the loss of the Land, for Reverentiam er honorem

Vaffal, qui contra const. Lothar . regis bemif. aliea 1. generaliter 13. C. H.

Tir. in feud. de debet vafallus Patrono, nec (q) eum offendere debet, the Vasial or Tenant oweth reverence and honour to his Patron or Lord of his Land, whi dutem debetur reverentia, vel ubi honor naturali-D. L. venia z. ter est prastandus ibi est necessaria venia impetratio, for where Reverence is due, or honour by the Laws of nature is to be performed, there or in fuch cases the asking of leave or licence will be necessary, from which our Common Law doth r L.L. Henrics not much diffent; when by King Henry (r) the first his Laws, Qui facit advocatum contra Dominum fuum per superbiam, perdat quod de eo tenet, he which proudly and presumptuously retaineth an advocate against his Lord, was to forfeit the Lands which he held of him, and where leave is given, unicuique se defendere in quolibet negotio, to every one to defend himself upon all occasions, there is an exception that it must not be contra Dominum quem tolerandum, against the Lord, whom he is to forbear; and the words of the Tenant by Knights-fervice doing his homage, wherein he doth fay, Jeo deueigne vostre bome

primi cap. 43. & 83.

foyal

foral & loyal , I become or acknowledge my felf to be your man faithful and loyal, catries with ican obligation of fidelity, de with or membris fuis & terreno honore & observatione confilii sui per hanestum & utile, of life and members and of all earthly honor and observance, and keeping his Counsel in all things honest and profitable, saith the authentique or Red book of the Exchequer, and the Tenants holding of his hands betwixt the Lords in the doing of his homage, fignifieth faith our Bracton Fleta and Coke reverentiam (s) & Cokes 1 Subjettionem, Reverence and Subjection, and be-part Coming then unarmed, and his fword ungirt, deno ment upon teth that he is never to be armed against, or op-lib. 2. cap. 1. posite to his Lord ( which by profecuting or at-& lib. Rub. resting any of his servants without leave, he may cap. 55. well be deemed to do) and in that federe perperuo, as to them, etornal league betwixt him and his Lord, is not faith Bracton propter obligationem homagii, by the obligation of his homage, to do any thing, quod vertatur domino ad exharedationem vel aliam atrocem injuriam, which may turn to the disheriting of his Lord, or other great injury, (which a fawcy and unmannerly arrest and haling of his fervants to prison without licence first obtained, hindring thereby his dayly and special , Bracton fervice, wherein his bealth, fafety and honor, 80. Britton. may be more than a little concerned, endange-174. & red, or prejudiced, must needs be understood to be) Coke Comwhich if he shall do , justum erit judicium qued ment. super amittat (t) tenementum, it will be just that he I. tit. hoshould lose his Land, and our Writ of Celfavit mag.

die Emmando Verwhich the Tenant wishe perform nor his fervices to his Lord within two years, shall have his Land recovered against him. redeemable only by paying the arrears of rents, if any, and undertaking to perform his fervices botter for the future, befocaks the fame punishment, & a certain conclution will therfore follow upon these premisses, that all such as did before the conversion of Tenures in f cage, hold of the King their Lands immediately, in Capite, and by Knights fervice. ought not to fue or molest any of his fervants without license; and although that infeparable Incident of the Crown, and most Antient and noble Tenure of Chivalry and military ferwice is now as much as an Act of Parliament can doit, turned to the Plow, or focage Tenure, yet the fealty, which is, faith ( w) Sir Edward Coke, included in every doing of homage, which being done to a meine Lord, is always to have a Salva fide, faving of the Tenants faith and duty to the King his heirs and Successors, doth or should put all that are now fo willing to hold by that tenure, and to leave their Children and Estates to the greedy and uncharitable defigns of Father-in-Laws-under the conditions, and obligations of fealty, in mind or remembrance that by the fealty which they do or should fwear unto the King and the oath of Allegiance, which containeth all the Effential parts of homage and fealty, which are not abrogated by that Act of Parliament for alteration of the Tenures in Capite, and by Knights fervice into free & common focage, and the Oath

n Coke Comment. faper littleton tit. hemag.

of Sapremacy, to maintain and defend the Kings Rights, Prehaminences, and Jurisdictions, cannot allow them that undutifull and unmannerly way of Arrefting, Moletting, or Imprisoning any of the Kings Servants without leave or dicence first had land that a Copyholder in Socagoo for feits his Lands if he focak unreverent words of his Lord in the Court holden for the Mannor, con goeth to any other Court wherely to intitle the Lord thereof to his Copyhold, or doth replevin his Goods or Carrel upon a Diffres taken by the (m) Lord for his Rent or Service, or refuse to w Vide combe fworn of the Homage which in Copyhold pleat Copy-Effates is not taken away by she Achof Parlias holder faid ment of 12 Car. Regis Securiti, for the taking away to be Writof Homage upon Tenures in Capite, and by Edw. Coke. Knights Service. And where a Gopybold Tenant, against whom a Recovery is had carined have a Writ of falle Judgement, he liath no other remedy but to petition the Lord to Reverse the Judgement, nor can have an Assife against his Lord, but may be amended if he use contemptible words in the Court of the Mannoruto an Tury or without inft cause refuse to be of (x) it, that all x Cokes 4. the Lands of England are held immediately for relatitit. Comediately of the King, that overy Freeman of pyhold 146. London, befides the Oaths of Alleginace and Su-idem 1.part. premacy, takes a particulari Oath whenthe eis upon Littlemade Free to be good, true, and obeyfant to the ton, lib. 2. King, his Heirs, and Successors and dortrenjoycap. 1. all the Liberties and Breedome of the City Frade, and Companies, by and under them -100

And that they and all other Subjects his affricts Devibuor which are under fuch Obligations, cannor by their Homage, Fealty, Tenure of their Lands, natural Ligiance under which they were born, and Oaths of Allegiance and Supremacy. without violation of them, and the hazard of their dreadful confequences, increach upon those just and rational Rights and Priviledges of the Kings Servants, confirmed by as many Acts of Parliament, as our excellent Magna Charta of England hath been at feveral times after the making thereof, at the granting of which, King Henrythe 3d. took fuch care of his own Rights and Priviledges, as by his Writ of Proclamation to the Sheriff of rork, wherein mention being made that he had granted to the people the Liberties merrioned in the Magna Charta, which y Clauf. 9. (1) he would have to be observed, he commanded H. 3. m. 9. him nevertheless, that all his own Liberties and priviledges which were not specially mentioned and granted away in that Charter, should be frecially observed as they were used and accustomed in the times of his Auncestors . and dipecially in the Raigh of his Father King Tohn or in more loc one

For our allegiance due to the King being wince land drating, a morefletict tye betwire the King and his Subjects, ingaging the Soveraign to the Protection and just Government of his people, and they unto a due Obedience and Subjection unto him; by which faith the Custumary of Norman-lie, is senenthrecentra owness homines qui mori

Pof

poffunt. de vivere propris corporis prabere confilium? de adjuvamentam. O ei fe in omnibus Innocuos exhibere, net ei adversantium partem in aliquo fovere. to give him councel and aid against all men living, and dying, to behave themselves well towards him, nor to take any ones part against him. (2) will leave fuch infringers of his Royal Z Spelmans Rights and Piviledges inexcusable for the disho-Glossar. in nour done unto him by Arresting, Molesting, or voce ligean-Imprisoning his Servants upon any Actions or mar, vet. Suit without leave or licence, and at the same Norman. time when many of them do enjoy the Priviledges cap. 43. of HAMSOCNE (a word and priviledge in use and practice amongst our Auncestors the Saxons ) or questioning and punishing of any that shall come into their House, Jurisdiction, or Territotory, by the (a) gifts, grants, or permission of a Spelman the King, or tome of his Royal Progenitors, de-Glossar. in ny or endeavour all they can to enervate the voce Ham-Rights and Liberties of him and his Servants, focue. when they may know that he and his Predecessors, Kings and Queens of England, have, and ought to have an Hamfocne, Ham in the Saxon Language fignifying domus vel habitatio, an house or habitation, and Soone, libertas, velimmunitas. a liberty, immunity, or freedom, to question and punish any that shall invade the Liberties and Priviledges belonging to his House, Palace, and Servants, vel aliquid alind faciendum contra voluntatem (b) illius qui debet domum vel curiam, b Vetus M. or by doing any thing, faith an old Manuscript S. Monaster. of Coxford Abby or Monastery, which is against de Coxford.

the will of the owner of the House or Court, which King Henry the first in his Laws de Ture Regis, concerning some particulars of his Prerogative and Regality, did number amongst the raft, and accompt to belong unto him and his Successors, and in the perclose of that Law, which in some Copies is mentioned to be made affensu Baronum Regni Anglia, by the consent of the Barons of England, it is faid hat funt Dominica placita Regis, nee pertinent vicecomitibus apparitoribus vel ministris (c) ejus fine diffinitis pralozutionibus in forma sua, these are the Rights and Jurisdictions belonging to the King in his Demesne, and do not belong to any Sheriffs Apparitors or their Bayliffs, unless especially granted unto them.

c LL. Hentici primi.

> By which, and the HUSFASTENE, an old course and custom amongst the Saxons, which ordained that every house with their FOLGHERES. Followers, or Servants, should be in Franco Plegio, in some Franke pleg. or Liberty, where by the Courts held in those places, or Juffice there to be had, any controversies betwixt them and others, or wrongs done by or unto them, might be determined the rule of the Civil Law which in many of the Customs or, Municipal Laws of this and other Nations, was the guide or Pole star which conducted them, being that actio fequitur forum rei, the Action to which our Common Laws have ever fince in their Real and other actions much agreed, is to be tryed in the Court where the person or lands of the party de

(175)

defendantare, & that before recited law of K. Edw. the Confessor, which amongst other his highly valued Laws, Enacted, that Arch-bishops, Bishops, Earls, Barons, and all that had Soc a liberty of diffributive Juffice in their Lands or Territories . and Sac (d) a power to fine or punish such as d L L. were found guilty, either by complaining with Edwardi Confessoris, out a cause, or proved to have done wrong to a- 11, 22, 23. nother (which gave or confirmed many a liberty, or fet the example of the fucceeding Kings, gratifying many of their Subjects with the like, in making them tanquam Regali, little Princes within their own Estates or Dominions ) should have luas Curias & Consuetudines, their Courts and liberties in their view of Frank Pleg. Court Leets, and CourtBarons, and should have under their Jurisdiction, etiam milites suos & proprios servientes, fuch as served them in wars, or held of them by the service thereof, or were their domestick or houshold servants, Item (d) & isti suos e Bratton. Armigeros & alios fibi servientes , and the Ef- lib. 3. C.10. quires and fervants likewife of their fervants, faith Bracton, expounding that Law of King Edward the Confessor, the King certainly should not be denied his own Franchise view of Frank-Pleg or jurisdiction to do Justice where either his fervice or fervants were concerned, or at least to be complained unto before any violent course of Law should be taken in other Courts against them, for otherwise if the King should not have always had fuch a franchife view of his Frank Pleg. or Laws or Customs Hospitii sui, as Fleta terms them,

of his Royal House or Palace, there would have been some veftigia foot steps or track to be found cither in the Antient Monuments and Memorials of our Laws, or of those of later ages, or of some other time, That the King had been an immediate or fingle Complainant by way of Action for any abuses only offered to his servants; or contempts to his person or Royal Authority, which by a long most just and necessary prescription, as far as time with his Iron teeth hath left us any remembrances was always left and referved to the authority and Jurisdiction of the Lord Chamberberlain of the Kings House, and the Kings other great Officers, who by the Messengers of the Kings Chamber, who in fuch particulars have been as the Lictores, Sergeants or Bayliffs pro ifta vice, upon fuch occasions to arrest and bring them to the Justice of the King in his Royal Court or Palace and must needs be as lawful, or a great deal more in his own particular & immediate concernment, as it is for the LordKeeper of the great feal of England, or Lord Chancellor to direct the Kings Serjeant at Arms allowed to attend that great and illustrious Officer and Superintendent of the Chancery by himself, or his Deputy to arrest and take into his chargeable custody the person of any that shall have committed any grand or reiterated contempt against the process orders or decrees of that honourable Court or for that or the Court of Common-pleas, to make the Warden of the Fleets men or the Virgers or Tipstaves attending upon the faidCourts, or for

The Courts of Kings Beach or Exchequier to make the Warthals of Tapltaves thereof to be The Lie Pores of Mellengers of their punishments and difpleafure, or as the house of Peers in Parlia ment do make use of the Kings Usher of the black rod, and the house of Commons in Parliament of the Kings Serjeant at Arms ; nor could it have been likely that the Lord Chamberlain of the Kings house, who in the Reigns of our Kings Edward the first, second, or third, and probably by foregoing and elder constitutions, did in the ablence of the Lord Chief Justice of Enoland, vicem gerere, exceute in the Kings Court, as Fleta tells us, the Office or place of the faid Lord Chief Justice should not retain in the Government of the Kings Servants and Houshold, fo much power as might protect them from injuries or their Royal Mafter from contempts or neglects of Duties, or respects to his person Palace or fervants, for who that hath not bid defiance to his own Intellect, as well as the wildom of former ages can pretend any fliew or colour of Reason. that the King should want the power or authority to do as the late bleffed Martyr King Charles the first did in the apprehension of certain Watermen in the year 1632. and committing them to Bridewell for refusing to carry the French Ambasfador by Water, upon the complaint of the Kings Mafter of the Barge in the year 1634. for the apprehension of william Hockley a Hackney-Coachman for refusing to wait upon the French Embas-Sadon, or of John Philpots Post-master of Roche-

Her for dif-respects to Monsieur St. German the French Embassador, or in the year 1636. for the arrest of John Clifford of Chelley; upon the Complaint of the Spanish Embassador, or to cause one Robert Armstrong to be taken into cuflody by one of his Messengers in the year 1639. for arresting the Post-Master of St. Albans. who it may be, for ought the offender then knew. was bringing some Packet or Letters to the King or his Lords of the Councel, for the discovery of fome impending dangers, which would need as fudden a prevention, as the Gunpowder once intended, and near atchieved Treason, or to cause in the same year Richard Horne of Watton in the County of Oxford to be arrested and taken into custody upon the complaint of Mr. Hiorne Deputy Steward of Vvoodstock, for not only refufing to furnish horses to carry the Kings Venison to Court, he being Constable, and required, and of duty ought to do it, but for reproachful and ill language; or as was done not long before or after in his Reign, by a Warrant under the hand of the L.Chamberlain, for the apprehension of one that had spoiled or killed a Mastiff of the Kings, when as our Laws have not yet had any prescript, form, or writs remedial for any of those or the like accidents at the Kings fuit only, for it would be no small disparagement to the Majesty of a King, and supreme of fuch an antient Empire, not to have power enough to redrefs complaints of that nature, or to be enforced to put Embassadors to be Petitioners to his inferiour and delegated Courts. of

of Justice, which no Monarchy, Kingdom, or Republique in Christendom was ever observed to fuffer to be done for that which their Superiors. according to the Law of Nations ever had, and should have power to grant without them; for when our Laws, which do not permit the King as a Defendant, to be commanded in his own name, under his own Seal, and by his own writs. or as a Plaintiff to supplicate those whom he commissionated to do Justice in his name, and by his authority to all & the meanest of his Subjects. to do a parcel of Justice to himself when he want. ed no remedies, by his own Meffengers or Servants to imprison any that should offend against his dignity and authority, and in matters of his Revenue, or for contempt of his Royal authority can by feifures or diffress, office or inquisitions & process of his Courts of Exchequer, Chancery, Kings Bench, Common-Pleas, and Dutchy of Lancaster, &c. give himself a remedy, & is not to prosecute in any Actions at Law, as common persons are enforced to do, for our Kings should not certainly be denied their fo just and legal rights, when by their Office and dignity Royal they are the principal Confervators of the Peace within their own Dominions and by their Subordinate authority the Judges of their Courts of Record at westminster, and the Justices of Assize can and do legally punish and command men by word of mouth to be Imprisoned or taken into Custody by their Tipstaves, Virgers, Marshals, or by the Warden of the Fleet, or his men attending them, when the Lord Steward of the Kings Houshold An 2

Buoland are by their Offices Confervators and Intires of the Peace in all places of the Realm .! and the Steward of the Marshallea within the virge by that derived anthority can do the like and all the Juffices of Peace in England were and are authorifed by him who hath; or should have certainly on greater power than any Justice roft: Peacewho may by Law award a man toprifon weh breaketh the peace in his presence, or appoint f Lambards his fervant to ferve (f) or execute his Warrant. or carefe by word of mouth to be acrested or ime 1 lib. c. 12 prisoned, the person offending for contempts or an offender being in his presence, to find security for the Peace, and by the Common Law caule Offenders against the Peace to be punished by 14 H. 8. 18 corporal punishments, not capital, as whipping, & lib. 1. ca. &cowhen a Sheriff of a County; and the Majors 3. 14 30 15. and head Officers of Cities and Towns Corporate do the like, under and by the power given them. by grants of the King and his Progenitors, when the Seward of the Sheriffs Turn, or a Leet, or of an Court of Prepowden any committany to ward which shall make any affray in the presence of any of them, when the Lord Mayor of Londong whose Chamberlain of that City hath a poo wen appropriate to his Office to ) of Chamberlain to fend or commit any Apprentices of Landeb upon complaint of their Mafters, or otherwife to the Prison of the Compters, or to punish and deform fuch disobedient Servants ( though the younger Sons of Baronets, Knights, Elquires, soem, when the Lord Steward of the Kines

Survey of

lorfluor-

Eirenarch.

& 13. lib. 2

c. 2. 88,89.

8 E. 4. 14.

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Lamberds

Eirenarch.

lib. 2. 84.

4. 3. & Lamberts

85. & 9 E.

Eirenarchia

lib. 1. 26.

60 & 61.

lib. 1. cap.

12. & 13.

g Stowes

London.

(18r)

or Gentlemen, and fomerimes the elder Sons of decayed or impoverished Esquires or Gantlemen, who should have a greater respect given unco them then those of Trades men, Yeomandry, or lower Extractions by cutting and dipping their hair, if too long and proudly worn, or grule them to be put into a place well known in Guildhall handen Called Little Enfe, whose to a great Torment of their bodies they cannot with any ease fir, lie, or stand, or by fometimes committing them to Bridewell, or fome other place, there to be foourged and whipt by a Bedely of fome persons differifed; for no man can tell where to find or differn any reason that the King should not supon extraordinary occasions have formuch power and toertion in his high and weighty affilias of government, protection of his people, and pricuring and conserving their peace; welfare and happines; as a Steward of a Court Leet, or the Lord thereofin their far less affairs or Jurisdictions, by bunishing of Bakers and Brewers livithat very ignorin lons and now much wanted we of the Billow and Tumbrel oin the later whereof the Offender was to be put in a Cathedra or ducking flool placed tover fome flinking and muddy pool or pondo and feveral times immerged in it or than by any hawon reasonable custom nurkings of Englanderer ditaxe a more similed power in matters of apunifilment & government, or a lefe power than the Mafters & Warden's of that perty and lowermant the lamerected Company or Corporation of the Millers only excepted) Company of Corporation ble watermen who, acting under the Kings authority,

can fine the Mafter Watermen for offences committed against by taws of their own making, and imprison them without Bail or Mainprize for not paying of it, and cause their Servants for offences against their Masters, to be whipt and punithed at their Hall by fome vizarded and invitible Tormentorsy of less than the power and authority of a Parith, and most commonly illiterate and little to be trufted Conftable, who may upon any affray or breach of the Peace in his prefence or but threaming to break the peace; put the party offeuding in the ( b) stocks, or keep him at his own house antil he find fureties of the peace; or less than those necessary military powers and authorities exercised in Armies, Garrisons, or Guards, by inflicting upon offenders that deferve it, the punishment of running the Gantlet, riding the wooden horse, &c. or in maritime affairs, by beating with a Ropes end, ducking under the main yard, &c. when as the Powers given by God Almighty to his Vicegerent the King and Supremeli Magistrate, and the subordinate and derivative power concredited by him to his delegated and commissionated inferiour Magistrates, are not debarred that universal and well-grounded marish of Law and Right Reason; Quando Lex aliquid concedit concedere viderur & id fine quo rer affe munpareft, when the Law granteth any thing it granteth, the means without which the matter or thing could not be, which the now Lord Mayor or London, or fome of the Sheriffs or Aldermen of char City thought to be Warrant trainfill who as me under the Kings authority,

h Lambards
Eirenarch,
lib. 2.scap.3.
133 & 134.
& trait. de
office Constabl. 16,
17.

fufficient for imprisoning ( if report be not miftaken ) a poor Cobler living in or near Pleet Street for flumbling upon a piece of a Jeft or Drollery and faying, he thanked God he had dined as well as the Lord Mayor, when his Lordships coming or being invited to dinner with the Reader and Socicty of the Inner Temple, in or about the latter end of the Moneth of March 1668. had upon his claiming a liberty to have the Sword of the City born before him within the Liberties of the Temple, caused some Tumult or Ryot, begun as the Gentlemen of that Society alleaged, by his own party, the harmless Coblers curiofity had only perswaded him to leave his small subterranean Tenement, shaded with his usual frontelet of a few old shooes, to be amongst many other of the Neighbourhood a Spectator of that contention betwixt the Lord Mayor and that Inne of Court concerning its Privileges, the one endeavouring to infringe, and the other to defend the Temples very antient & clearly to be evidenced privileges: And many Justices of the Peace would be unwilling that their punishments by committing of men to prison for ill words, mis-behaviours, or sometimes by a but supposed affront, given or used unto fome of them for a Tobaccoe-pipe casually thrown out of the window of an Alehouse into a neighbor Justice of the Peace his Garden, when unperceived by the Thrower he was walking therein, should be adjudged to be without the bounds or limits of their Commissionated Authority, nor should they or any other of the Kings Subjects refuse to fubindiffitibe 19 that will known Axiom confessed unto by one laws as well as the law of decions that derivative power (4) or authority cannot be greater than the power and authority

(i) 2 Aff pl.

being in ited to dinner with the Reilievez daidy And therfore it should neither be taken to be any over bold affertion wain imagination, or inference weakly built, conjecture of conclusion without premifes, that the fervants of the Kings of Engl land in ordinary ought not to be bereaved of their aforefaid Privileges, and that all the Subjects of England are more, then a little obliged to take a care that they should enjoy them , when as every Male of England and Wales, above the age of 12 years, are to take and Iwear the Oath of Allegiance, which was a law fo long agoe inflituted and ordained, faith Sir Edw. Coke before (k) the Conquest as King Arthur, is by good Warrant believed to be the Author of it, and all the People of England, who fince his Majesties happy restoration have sworn it, and by that great tie and obligation did undertake to bear truth and faith unto him and his Succe fors of life and member, and terrene honour, and that they (bould neither hear or know of any damage intended unto him which they Should not defend, & all which do take degrees of learning & faculties in our Univerfities, all Judges, Sericants at Law, Justices of Peace, Bariffers at Law Mayors, Sheriffs and Magistrates whatsoever, under Sheriffs and their Deputies, and all Bayliffs or Suler effetti ? ennis ando rento yn Officets

k Calvins Case, Coke 7 Report. & LL. Edwardi Confessor. 3.35.

Officers and Clerks entrufted in any Court of Tuflice do not only take and fwear the Oath of Allegiance, but the Oath of Supremacy, which is to defend the jurisdictions and privileges, preheminencies and authorities of the King his Heirs and Successors annexed to their imperial (rown and dignity, and by all those very binding, and foul as well as body engaging obligations should in no case endeavour to impugne or obstruct ( which the arresting of his Servants in ordinary, or his necessary attendants without leave or license first obtained doth affuredly do) his so antient, so legal, and fo long accustomed just Rights (1) Jurisdictions, Privileges and authorities inseparably (1) 26 H 8. incident and appurement to his Povel 2007 (2011). Eliz. incident and appurtenant to his Royal govern-cap. 1. & ment, it having been in the Reign of King Hen- 5 Eliz. cap. ry the 8th. one of the Articles against Cardinal 1. Welfer Subscribed by the Lord Chancellor, the Dukes of (m) Norfolk and Suffolk, diverse Earls (m) Lord Barons, and some of the Kings Privy Councel , Herberts that where it had been accustomed within the Realm, History of that when Noblemen do freear their Houshold Ser-King Henry vants, the first part of their Oath bath been, that the 8th. they bould be true Deigemen to the Ring and his Heirs, Kings of England, the fame Lord Cardinal had omitted to do it.

Nor have those rational, legal, necosary and well grounded privileges of Kings of Princes Servants, decursus Temporis, by any change or long course of time been so discontinued, antiquated or altered upon any pretence of grievance or inconveniencies whatsoever, as not now to be extant Bb and

381.186

and found in our Neighbour Nations, and moff other of the civilized parts of the world, not only where the fear of God or honour of Princes have any thing to do, but even amongst those which having not had light enough to know the true God, have in their ignorance fancied and made to themselves Deities of their own imaginations.

When our Neighbours of France, who were heretofore better acquainted with their Liberties

than fince they are, or are likely to be, did not think it to be a thing unreasonable that the King of France his servants in ordinary should enjoy those or the like immunities and privileges, when n Vincenti- non nifi ( n ) venia prius impetrata, without leave first obtained ab Architriclino five Occonomo hofpitil regis, from the Master of the Kings houshold, ( as with us the Lord Steward or Lord Chamberlain ) neminem licet per Francorum leges in jus vocare in Palatio, It was not lawful by the Laws of France to fue or arreft any in the Palace, or belonging to the Kings houshold . Pares Francia pratoribus Regist non Swipiciantar, The Peers of France (a) are not to be tryed by the Kings ordi-

> ed by any which were not of the Nobility. In the year 1288, which was about the 24th. year of the Reign of our King Edward (p) the first in the case of John Pempline it was in the

> nary Courts of Justice, Et non ferebat nobilitas de

feudis ab ignobili ullo judicari, the Nobility of

France will not endure that any thing concerning

their Fieffs or Lands should be tryed and adjudg-

Parli-

us Lupanus, lib. t. tit. Magistr. bo pitii.

o To. Tili Comment. de rebus Gallicis lib. 2. 141. 150. 6 tit. de paribus Gallia. p Tilii Commentar. de rebus Galicis lib. 2. 183.186.

Parliament of Paris adjudged that he being the Kings fervant in ordinary ought not to pay any Afselsment.

And the like in the year 1311. in the Raign of King Philip the sair of France, which was (q) a-q Johannis bout the 4th. year of the Raign of our King Ed. Tilii Comward the second, in the case of Baldwin and Promentar. de ger, Et Philippi pulchri constitutione ad Architric-rebus Gallilinum sive Occonomum actionalium personalium ju-183. & 186. risdictio pertinebat que a ministris Regiss omnium—Tit de officiis que criminum cognitionem sibi vendicabat que in domesticis Comitatu Regis admittebantur, and by an Ordi-Regum Gnance made by the said King the cognisance of all personal actions commenced by any of the Kings Lupanus lib. Servants did appertain to the said Master of the houshold, who claimed likewise the Trial of all gift. bospi-Criminal matters committed in the Kings House.

Philip King of France called the Long, in the year
1317. which was about the 10th. year of the (r) r Jo. Tilii
Raign of our King Edward the second did com-Commentar
mand that Taxes or Assessments taken from three de rebus Galof his servants should be restored unto them, licis lib 2,
which was consented unto by his Parliament, and
by a decree in Parliament the next year after it
was ordained that, Omnes Domestici Regis administri pronunciantur immunes ab omni commeatuum
vettigalibus quos ad necessitatem & usum suum suum
portari curant, all the Kings houshold servants
should not pay any Taxes for the provisions which
they bought or provided for their necessary uses

or occasions.

In a Decree of that Parliament made in the
Bb 2 Raign

Raign of their King Charles the 5th, called Charles the wife, in the cause of Silvester Cornelius the Kings Almoner, in the year 1367. which was about the 41th year of the Raign of our King Edward the 3. it was adjudged, that, Domestici officiarii immunitate gauderent a vestigalibus, the Kings houshold servants should be freed from Taxes.

By an Edic made by K. Charles the 6. of France, & ratified by Parliament in the year 1408. Which was about the 5. year of the Raign of our K. Henry the 5th. It was ordained, Ut qui ministri Regis viginti Annos aut amplius ministraverint vacantes a ministerio stipendia tamen habeant, that those which had served the King 20 years or more, should, though they lest their service, have their wages continued.

Immunitas ab indictionibus subsidiariis omnibus ettributa domesticis Regum officiis de pradiorum suorum fructibus cum approbatione Parliamenti, a privilege & freedom was granted by the aforesaid King Charlsthe 6. from all subsidies to be charg' dupon any of the Kings houshold Servants, by allowance of Parliament in the year 1411. Which was in or about the 8th. year of our King Henry the 5th.

By a Letter of Lewis the 11th. who raigned in France in the time of our King Edward the 4th. fent to the Parliament and Registred therein, that King required, ut prime lose suorum officialium tausas judicet nist contendentium su ipsius aut Regine domesticus in que casu se moveri jubet ut expenat de eo voluntatem suam, that in the first place they should hear and determine the causes of their own.

Officers, unless one of the parties should be the King or Queens servant in ordinary, and in Such a Cafe commands that he be first moved, and his pleafure thereupon declared. man a startlant

Francis the first, King of France in Anno 1,525. which was about the 16th. year of our King Henry the 8th. fent his Declaration tothat Parliament, wherein he ordained that his Mothers houshold fervants should enjoy the like privileges as his Officers and fervants did, and another Declaration to that Parliament in the year 1 542; quod officiales domesticos & commensales suos ab omnibus tributis Indictionibus pensitationibus eteamque Canone in quinquaginta peditum millia prestando Immunes erunt, that all his Domeffick Officers & Houshold fervants should not be charged with any Taxes or Tributes, or with Allesments towards the payment of 50000 foot men, and a like Declaration in the year following de fimili immunitate officiis Regina domesticis & commensalibus attributa, of the like privileges to the Officers and Houshold fervants of the Queen, seconded by a Declaration of Henry the second King of France Registred in Parliament in the year 1548. which was about the

fecond year of our King Edward the 6th. of the (1) Lover Privileges of the Kings Domestick and Houshold Recueil d' fervants, and the like to the Domeflicks and fer- Aucuns no vants of Elianor the Widow ( ) Queen. refts donnez:

In which Kingdom alfo notwithstanding an or-en la Cour. dinance made at Monlins about the year of our de Parle-Lord 1 566. which was about the 8th. year of the ment de Par. Raign of our Queen Elizabeth, the Mafters of Regris cap. 31 quefts

onefts are not to be arrefled or imprisoned for debt, until four months expired after legal notice. In the year 1626, the King of France fending the Marshal de Baffompierre his extraordinary Embaffallor into England, to reconcile fome differences between our late Royal Martyr King Charles the first and his Royal Confort the Queen, concerning the difcharge and fending away most of her fervants of the French Nation attending upon her, contrary as was pretended to the Marriage Contract: for fome infolences and mifdemeanors nor to be tolerated, and that great Embassador bringing in his Retinue, Father Sancy a Popish Prieft, whom our King had no respect for, in regard of some ill offices supposed to be done betwixt him and his Royal Confort the Queen, was no fooner come to Gravefend, but he had an expressOrder from our King to fend back the Father Sancy, who was in his ill opinion, and could not be endured to which the Embassador returning an Answer, that he was one of his Domesticks, and humbly intreating his Majesty not to intermeddletherein, faid, that the example alleged of Mr. Walter Mountague, who being in the Retinue of our Embassador, Sir Dudley Carleton in France. was upon the command of the French King in like manner dismissed, was not to be any rule or reason in his case, and that howsoever our Englift Ambassador Carleton permitted it, he would (t) rather lose his life than suffer such an affront to be done unto him; whereupon the Lord Conway. 91, 93.153 principal Secretary of State after his coming to the

t Nepotiation du Marescat. de Baffompiere en Angleter. en l' An. 1626. p.

the Court, bringing him a message from the King, that he would not give him audience, although he had promifed it, unless he would first fend Father Sancy back into Prance, the Embaffador replyed, that it would be in vain that his Majesty should defire any such thing of him, parce que absolument il ne le feroit ponit de que fi il ne vouloit plus donner audience il retourneroit wers fon roy, for that he was absolutely resolved not to do it, and if he might not have his Audience, he would return home without it, and notwithstanding that he was extremely pressed by some of our Ministers of State, who alleaged that the Kings honor & reputation was engaged therein, continued his Refusal, for that the Father Sancy came along with him by order of his King and the Queen Mother, whereupon the Embassador having certified his King of France of the proceedings therein did not long after by a Letter under his own hand receive his approbation for what he had done.

In the Empire of Germany the Domestique fervants of the Emperor are not bereaved of the Privileges of fervants attending upon the ( u ) u Severinus person as well as the publick cares of their Sove- de Monzomraigns, when the Familia Regia cum inter fe tum Imperii Gervel adversus alios controversie in Confilio Procerum manici cap. & Populi disceptantar, the controversies of fuits 5, 6, 9, 14. ( which is to be understood wherethe fudicium & 21. or Tribunal in Anla Gafarea in the Emperors Court cannot compose them ) of the Emperors. family brought either by or against them, are m

(192)

be heard or decided in the Diets or other publike meetings of the States of the Empire.

inda Florence, Siena, and Pifa in Italy no man

may arrest or (x) commence a fuit against a Courtier, Souldier, or Eftranger without a special Licence from an Officer of the great Dukes Court thereunto appointed.

Duke of Tufcanies

In the very large Dominions of the Ottoman Istate in the Empire . flich as receive any wages, or pay coming from the Exchequer, or have any Office depending on the Crown, are commonly free from the least (y) Injury to be offered unto them, when cault flate of fuch as offend therein are fure to be feverely punified a nichoral buseagno as an

the Ottoman Empire, c.3.

x Daling-

tons Survey

of the great

year 1596.

y Paul Ri-

Those fons of Winter & rudeness the Russians or Moscovites can in their small commerce with Latine or other learning, and the better manners of their neighbour and other Nations fo well understand the Privileges or respect of Kings and Princes Embaffadors, who are therein but as their especial Servants or Messengers, as when in the Earl of Carliles Embaffy from our Soveraign King Charles the fecond chither to the Frait or Embenor of Moscowy in the year a 664 a Gentleman of Plefede having feized or diffreyhed two Horfes belonging to the Embaffadors Train, which he had found in the night to have broken into his Paffures, the Governor of Plefore was ( 2 ) no fooner enformed thereof, but he apprehended the Gentleman and feat him bound to the Embaffador to beg his life; which upon his acknow-

Z Relation of 3 Embasfies of the Earl of Carlile into Melcovy, written by G. magie one of his attendants 322. 6 366 ledgement of the indifferetion of the fact was caffly pardoned by the Embassador, the King of Sweden not denying those respects which are due ro Embassadors, when in an Embassy into Sweden in the same year, he did at the Embassadors request release out of prison one of the Embassadors servants that had in a Duel slain a German

Colonel of the Embassadors retinue.

The People of Holland and their confederate Provinces who do fo fondly dream of their freedoms, do not think their fo hardly gained liberties loft or retrenched, when for the military part of their Illustrious Princes of Orange or Stadtholders, Domestiques, or any of those they call the States general fervants, being the greatest part of their Menials, they cannot Arrest and profecute any of them at Law, before leave petitioned for, and obtained; and as for any other of their fervants not imployed in the War, or any of those many several forts of Officers and Offices appurtaining thereunto, there are enough of that Nation can tell that their Greffiers or Process makers can, although they are to make out their Mandates and Process ordinarily, and in common forms, without a special order of the Judge or Recht Heer so easily find the way to a Biass, or partiality as to deny it, in the case of any of their Superiors Domestiques, until they have a special order for it, which after a tedious attendance is not to be gained until the matter or debt complained of be referred and put to certain vreede mackers Peace-makers, or Arbitrators, who can toss the Case in a Blanket, and make

the Plaintiff a Labyrinth of delays, which at long treading shall only bring him to a Mandate, and a tyring, chargeable and tedious profecution at their Law against such a protected feemingly unprotected fervant.

a Samedo relat. del China parte

1. 20.

Nor is it rationally to be believed that the fervants attending upon the person, or in the (a) Court of the Emperor of China, whose Dominions are, as Samedo faith, as big as Spain, France, Italy, Germany, the Belgicque Provinces', and Great Brittain, where the Mandarines his great

Hornii Semedo part 1. cap. 22. 115.

Officers of State, Lord Lieutenants or Governors of Provinces, are by the common people fo orbis Politic. highly reverenced, as they are as they pals almost parte 4. 71. ador'd in all places, the people passing in the Streets alighting off their horses, or coming out of their Chairs or Sedans, when they meet them do not enjoy as great a Privilege as the Servants in ordinary of our English Kings do claim to be free from Arrests or suits in Law, before leave or licence first obtained of some of the superiour Officers of his Court or Houshold, wherein there are nine Tribunals called Kicu Kim, particularly appointed for matters of controvernes which concern the Servants.

In those largely extended Empires of Fapan, Persia, Industan, and all the African and Asia-Warenius tique (b) Kingdoms and Dominions, where the de regno Ja. power and will of the Princes are their Laws, the pan. cap. z. fear and obedience of their Subjects are so very great, and their reverence fo extraordinary, as they do honour and efteem them as Demi-Gods.

and

and have so great a respect of their Chancellors, Privy Councellors, great Officers of State and servants implyed by them, no man can so much missure his reason or understanding, as to harbor any thought or imagination that the servants of those Emperors or Princes are at any time without leave or license arrested or prosecuted at Law.

And well might our Kings and Princes, and all other Soveraign Kings and Princes understand the mif-usage and disgrace of their servants to be Crimen immunita Majestatis, no small crime or lessning of Majesty, and an abuse and disparagement to themselves, when the Romans, with whom their neighbours the Sabines scorned to Ally or marry, in regard of their then ignoble race and originals, could in the height and grandeur of their all-conquering Republique, after fo many liberties obtained by taking them from others, creat and constitute Majestatem populi Romani, a Majesty so called of their faction breeding, inconstant and popular government, and accuse Rabirius Posthumus of Crimen lasa Majestatis, high Treason, for that being a Citizen of kome, he had contra morem majorum, the usage and custom of the Romans, made himself a Servant or Lacquey to Ptolomy King of Agypt at Alexan- c Suctonins dria, whereby to procure (c) some money to in Claudio,

be paid which was there owing unto him.

Neither are those that stand before our Kings Annotat. in and Princes, or attend upon their persons, or near extibro 47. concernments of their Royal Houshold, as Ser-digest.

vants in ordinary to be ranked amongst the multitude, or put under an ordinary Character, when reason of State, reputation of Princes, and the usage and custom of Nations have always allowed distinctions and respects proper and peculiar unto them.

For fo much difference was alwayes betwixt the servants of the Kings of England, who by the irradiation of Majesty, and Regal Resplendency are not without some participation or illustration of it, as they were always allowed a precedency before the greatest part of their Subjects, not of the Nobility and Clergy, for the Grooms of the Kings Bed-chamber doe take place of any Knight, whether he be the Kings fervant or not; and a Knight being the Kings, Servant, is to take place of any Knight which is not the Kings fervant in ordinary, the Kings Attorney, and Sollicitor general, and Serjeants at Law, except the two Puisneys of the Kings Serjeants at Law have not only precedency before other Lawyers and men of the long Robe, not Judges or Matiers of Requests (d) the later of which if but d Cassans extraordinary, and Advocates or Lawyers debet altos Advocatos precedere ) but with the Kings

other Councel of Law extraordinary, and the

Queens and Princes or heir apparants Attorney

and Sollicitor general, are in their Pleadings allow-

ed to fit within the Bars of the Chancery & Courts

of Juffice beneath the L. Chancellor, L. Keeper

or Judges, and are to have a præ-audience before

7 parte Catulog. gloria mundi. 36 confid. & per Text ad literam in auth, ut ordinaria prafentur.

any other Lawyers, by the custome of England drawn

drawn and derived from that of the Civil Law, the superintending reason of many of our Neighbour Nations, which ordaineth, that Advocatus e Budens Annotat.

Fisci the Kings Attorney general being first insti-in Pandett. tuted by the Emperor Adrian, prandit quoscun-titels de offique advocatos etiam eo antiquiores, quoniam major cio quastores. est autoritate, is to precede and take place of all other Advocates, although they be his Antients, for that he is greater in authority , & post advoca- f gl. est notum fici sedere debet in foro procurator Fisci, etiam tab. in verbo ante omnes alios advocatos simplices non habentes ali-restituuntur. am dignitatem cum Procurator Fisci etiam advocatus Selt. fi F. dici potest, and next to him in the Court ought de Jure the Kings Solicitor general to fit before any other Fifei & de Advocates having no other dignity, when as the ribus. Kings Solicitor general may in some fort be faid to be the Kings Attorney general, and the kings Attorneys and Sollicitors general are stiled Spettabiles, a title betwixt that of Illustris antiently given to Emperors, Kings, and Princes, and that of Clarissimus given to Senators, & tale officium confert dignitatem & est nobile officium, and g Jason in fuch an Office conferreth or makes a dignity, and A Rub. text is a noble Office, (g) and many of the Kings Mæ-in l. in facris nial or Domestick Servants which are under the 3 Sect. moranks and titles of Nobility, and were not theeldest dum. Selden Sons of Knights, are as our learned & judicious Sir of Hononr c. Henry Spelman hath observed, meerly, and on- 16. Sect. 2. ly by their ferving the King, faid to be Esquires or h Spelman Gentlemen and Trades-men serving their Prince , Gloffar. in or the kings Sadler, the kings Grocer, and the voce Armikings Haberdasher, the kings Lock-smith, &c. ger 42.43. may

It being adjudged in the Court of Common

may by their offices or places stile themselves (i) i Ant.Fa-Gentlemen, for although by the Civil Law, vaber defin. 18, num 4. nalitia seu usus vilis artificii ipso facto nobilitatem ao defin. mittat, a Trade confifting of buying and felling num. 8. or handicran, doth in the very act not allow k Flamin them to be Gentlemen, yet Principum artifices node rubes biles funt, the Workmen of Princes are (as it conf. 22. n. were ) Nobles, the compreher five term of 20. Nolden de statu no-Gentry, quia (k) omnes in dignitate positi, for bil. cap. 22. they have a kind of dignity belonging officiariis Sect. 1. 6 principum, to the servants or Officers of Prin-Caffanaus catalogo

gloria mundi 8 parte consid. 11. 114 H. 6. tit. debte 71.

Pleas in the 14th. year of the Raign of King Henry the 6 that the Serjeant of the (1) Kings Kitchin, or any other servant of the King in any other Office in his house is a Gentleman, and it was then faid by Juin the Chief Justice, that those of the Kings house would be grieved if they (boul be otherwise named, and it was by Newton one of the Judges of that Court then declared, that Gentleman or Esquire is a name of worship, that of Esquire being as antient in the Courts of our kings as the time of king Alfred, who by his last will and testament, recorded by Affer Menevenses (m) gave Legacies Armigeris suis to his Esquires, that Title being formerly fo uncommunicable to the Vulgar, as the eldeft fons of Dukes and Barons have not believed themselves to be disgraced by it, and in France (n) as late as the raign of their King Francis the first, who was contemporary with our king Henry the 8th. a valet de Chambre,

n Tilius Comment. de rebus Gallicis lib. 2. 173.

m Affer

Menevensis.

to

to the king was appellatio honorifica an honourable title, and the French kings Karvers were no longer agoe than in the reign of our Queen Eli-Zabeth stiled Armigeri, Esquires; and was not heretofore so apt to be mif-used as it is now, when too many of our Barrifters, or Apprentices at Law, do so much mistake themselves as to dream that a Tayler, Tanner, Butcher, Victualler, or Yeomans Son, though nothing of kin to a Gentleman, is ipfo facto an Esquire when he is called to the Bar in an Inns of Court, or being an Of. ficer in a Court of Justice, and admitted into an Inns of Court, heretofore only destinate and appropriate to the Sons of Nobility, or real, not felf made or created Gentry, as the learned Sir o Fortescue John Fortescue ( o ) Chief Justice, and believed de landibus to be afterwards Chancellor of England under our legum Angl. King Henry the 6th. hath rightly observed, with whom Sir John Ferne a learned Antiquary and Lawyer, who lived in the later end of the Reign of Queen Elizabeth, and was so great an honourer of the Profession (p) and Professors of the Ci- P Fernes vil and Common Laws, as he saith they do do glory of Gevil and Common Laws,, as he faith they do de-nerofay, 9:... ferve honour and reverence of all 'men, and referring us to Ludovicus Bolognius of the 130 Privileges due to a Doctor of the Laws, declareth that they ought to be honoured in the Courts of Princes, according to that faying, Doctores Legum (q) funt honorandi ab omnibus, Doctors of Angellib. Law are to be honoured of all men, and under 2. cap. de that notion comprehendeth Serjeants at Law, Officiis, and other the Legists and Professors of the Com-

mon

r Fernes glory of Generofity, 37, 43. 58.

mon Law doth not disagree when he giveth us not only the evidence that none but Gentlemen (r) were admitted into the Inns of Court, but the reason thereof, for that Nobleness of Blood joyned with Virtue maketh a man fit and most meet to the enterprizing of any publick service; and for that cause it was not for nought that our antient Governors in this Land did with a special forefight and wisdom provide that none (bould be admitted into the houses of Court being Seminaries, sending forth men apt for the Government of Justice, except he were a Gentleman of blood: And that this may feem a truth, Imy felf, faith he, have feen a Kalender of all those which were together in the society of one of the same houses, about the last year of King Henry the 5th. (f) with the Arms of their Houses and Family marsballed by their names, when Gentry was in that KingsReign fo rightly effeemxerosity, 24. ed and valued, as he being to raise an Army to go with him into France did in that warlike age by his Edict or Proclamation prohibit any to go with him but fuch as had Tunicas Armorum, did bear Coats of Arms, or were gently born or discended, except fuch as had ferved in the Battle of Agen-Court.

f Fernes glory of Ge-

> And the strict observance of admitting none into the Inns of Court but fuch as were born Gentlemen, was so lately used in some if not all of the Inns of Court, as Sir John Archer Knight. now one of the Justices of the Court of Common Pleas at Westminster, did in his valedictory oration or speech made to the Society of Grays-Inne, whereof he was a member, at his departure from thence

thence, when he was made a Serjeant at Law. mention it to have been a custome in that House at his first coming thereinto, to admit none but such as were Gentlemen born. And Sir John Ferne Was fo far from allowing the degree or title of Barrefter, to make one ignobly born to be thereby ipfa facto in truth a Gentleman, as he was of opinion that if such a Barrester were not before a Gentleman born, it only gave him as it did to Doctors of Law, Divinity, Physick, Prothonotaries, and other Learned men, a capacity to demand or have a Coat of Armes given him, and to be then stiled a Gentleman; otherwise he might only write himself A.B. Gentleman of Lincolns or Grayes-Inne, but not A. B. of Lincolns or Grayes-Inne Gentleman, and was no longer such a reputed Gentleman, than he continued in that Society into which he was admitted; and wished that Supreme Authority would t Cassanous renew the first institution of those Assemblies, and 8 parte Cathat by Visitation all such might be weeded out that talog. glorie cannot shew the badge of a Gentleman: For not- mundi, conwithstanding that the samous Lawyer Ulpian (t) sid. 10. was fometimes stiled Nobilis, and at other times suis Annota-Clarissimus, yet if he were not born a Gentleman, tionibus in it was propter Sapientiam vel Nobilitatem animi, Pandett. in in regard of his Wisdom and Nobility of mind, I. fi. in fi. ff. improprie dictum, and improperly fo called. de origine For the title of Gentleman well understood, Juris, &

hath more of a Worshipfull fignification, than 8 parte Cathe name or title of Esquire (u), which in its talog. gloria primitive use or acception was but a Scutifer, or mundi, 3 Armiger, a Shield or Armour-bearer, as was that confid.

1 Sam. ca. 14. 3.

of Tonathans Servant to a Horseman or Gentleman : for fuch were they most commonly called or allowed to be, who held their Lands of the King in Capite, or by Knight-fervice; and at the old Rome it was a credit or mark of effeem, to be faid and believed to be a Gentleman de gente Julia, Octaviana, vel Claudia, of fuch or fuch a Kinred, Off-spring, or Race, as the Children of Ifrael were long before known and diffinguished

by their Tribes or Genealogies.

x Spelmans Gloffar. in voce Armi-

y Spelmans Gloffar. in voce Armiger. 43.

ger. 43.

And that eminently learned Antiquary Sir Henry Spelman, inveighing against fuch an abuse of the title of Esquire, wonders that the Benchers of the Innes of Court would fuffer it, and faith, that not long before this present Century or age wherein we now live, (x) Nominatissimus in patria Jurisconsultus atate provectior etiam munere gandens, publico & pradiis amplissimis generos titulo bene fe habuit, the worthiest antient Lawyer, and most eminent in his Countrey, of great Estate, and in a publick Office, did well content himself with the title of a Gentleman; fic alii nuper viri plendidi, sic quidem hodje celeberrimus Serviens ad Legem, fo other eminent men (y) and fo a famous Serjeant at Law, forte quod togate genti magis tune conveniret Civilis illa Appellatio quam Castrensis altera, probably because that Civil Appellation or Title, did more agree with the Gown, or men of the Long Robe, than that of Esquire, which was derived from War, or antiently used but as an attendant upon it.

And in that did not much diffent from the

learned Sir Robert Cotton, who believed, that the bearing of Armes was not before the time of Bartolus that great Civil Lawyer, who lived about the year of our Lord 1356. in the Reign of Charles the 4th. Emperor, permitted to Gownmen, Lawyers or Advocates, or as the French do (z) term them, Men of the Long Robe, (and z Sir Robert under that name, faith he, are Learned men, Cotton in Clergy, and Scholars comprehended) or elfe tractat. vawhy should that great Lawyer Bartolus argue riorum de the matter, whether it were convenient that he flabularis should take or bear the Armes which that Em- Anglia. peror offered to give him, being a peculiar Reward and Honour in Military Service in antient time, or whether he should refuse it at the Emperors hands; for if it had been then usual for the Long Robe to have enjoyed the honour of bearing of Armes, Bartolus would never have doubted thereof: But fince it was not then accustomed, he made it a question whether he should take those Armes or no; but in the end concluded, that the Fact of his Prince was neither to be difputed or rejected, and therefore was willing to fume the Armes which the Emperor had given him.

And in England without the Authority of their King & Soveraign, amongst other the affairs and bufinesses of Genealogies bearing, allowing or granting of Coats of Armes, & ulage of titles and distinctions of Degrees, delegated to the principal Heralds and Kings of Armes in their feveral Provinces, will as little become those which are Dd 2 not

Officio Con-

not of Gentle extraction, in their unduly affumed title of Esquire, as it would do an High Sheriff, Justice of Peace, or Escheator, being no Esquires, and sometimes no Gentlemen, to imagine themselves to be Esquires, or any more than quali Esquires, or Esquires improperly so called, because they themselves gave the Clerk or writer of their Patents or Commission, a direction so to stile them; or the Clerk or writers pen, following the mode of the like mistakings, did with as little authority as reason so create them; which fupercilious felf-conceited Errors the Kings Great Seal of England, and the great Honour and Authority which doth legally and justly appertain unto it, cannot support or make to be no Errors; when as it is male recitando, (although the Kings giving by an actual Ceremony the Honour of Knighthood, to one that is not a Gentleman born, doth ipfo facto in the opinion of our learned Selden, (a) make such a Knight to be a Gentleman) and will be as much without the reach of a Nonobstante or dispensation, as where Lands are said to be one mans, when they are anothers; a Town named a City, when it is not; a Church faid be in one Diocess or County, when it is in another; or when a man difenabled, or ungentleman'd by reason of his Fathers attainder of Treafon, and corruption of blood, shall without restoration or reversal of that Attainder, be mentioned or recited in the Kings Letters Patents as an Esquire or Gentleman.

Selden 549

9. 24.

Or that an High Constables Wife should swell

her felf into an opinion, that her Husband is as much an Esquire as the best, because the Sheriff, Under-Sheriff, or Under-Sheriffs Deputy; or Clerk of the County where he dwelleth, when he was retorned to be a Jury-man, foolishly and carelessy stilled him in his Pannel by the name

and title of Efquire.

But would be as great an affront to truth, and contradiction to reason, as some Citizens of London late invented piece of proud non-fense, or ungrounded phansie, to stile a wealthy Citizen an Alderman, or dream that he is one, when he is none at all, and paid a great Fine that he might be none, and is not fo much as entitled to wear an Aldermans Gown, but is no more than a Gownless mif-called Alderman; and can have no more of truth or reason in it, than for a Chambermaid to a Lady, dressed up in her Ladies old Clothes, to believe her felf to be a Lady, because some overcomplementing small piece of wit hath mistakenly called her fo; or for a man of 20 1. per annum Free Land, to believe himself to be a Knight, and his Wife a Lady, because when according to the Statute made in the first year of the Reign of King Edward the Second, he was summoned to take the Order of Knighthood upon him, he compounded and paid a Fine to escape that dignity, which was too big for his quality or estate; and as great a madness and ridiculous, as that of Don Quixot, or our late Countryman Parsons the Taylor, fancying himself to be the Romance Knight of the Sun; or for a Bum Bayliff, or Countrey

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Countrey Catchpole, to imagine himself to be a Knight, or his Wife a Lady, because in imitation or observance of some antient courses or usages in our Laws, he was upon a Writ of View, in a Writ of Right or Entry, Dower or Formedon, retorned by the Sheriff to have been present at the View, by the title or addition of a Knight; and as little confonant to reason and truth, as for a Sheriff or Juffice of Peace to think himself to be an Esquire, because the King by his Commission for that particular time or purpose, was pleased to ftile him fo; or if it did conferre fuch a Title or Dignity, yet it ought not to remain either to a Sheriff or Justice of Peace, when they are exuti dignitate, out of those temporary Offices, by the Office of Sheriff being determined, or the turning the Justice of Peace out of Commission. which our reason as well as the Civil Law will not permit; when by the fummoning of a Great man of England to affift in the House of Peers in Parliament, or to attend therein, he is not thereby to be accompted a Baron by Writ, or to have Fee therein to him and his Heirs, unless he have been thrice summoned and obeyed those Writs.

And the Civil Law will tell us, that Si ratione alicujus officii debeantur aliqua signa seu insignia, if any Armes be given (the like being to be said of Titles) by reason of any place or office, they are but (b) durante officio, & sinito illo transeunt ad successores officiarios, during the continuance of that Office, which being determined it

b Cassanaus catalog. gloria mundi, parte 1. concl. 52.

goeth

goeth unto those which do succeed in that Office.

And that and the Law of Nations will give us the reason of a greater respect to be given unto the Kings Servants, rather than unto any other mens Servants, when the Emperors of the West and East were so carefull that their Domestick Servants and Guards should have a more than ordinary regard wherefoever they came, or had any occasion of business, though in any part of their large Dominions far or remote from their Imperial Courts, as in a Rescript of the Emperors Valentinianus, Theodosius, and Arcadius, order was taken and a command given, ut Domestici ac Protectores ofculandi cum falutaverint Vicarium, Prafecti, Pratorii, habeant potestatem pana enim Sacrilegii similis erit si his honorisicentia non deferatur qui contingere purpuram Imperatoris digni fint aftimati; that the Domesticks or Houshold Servants (of note) of the Emperors, and the Guards attending the Court, who were thought worthy to be about their persons, when they comment. came to falute the Deputy or Lieutenant (c) of lib. 12. Cod. the Major Domo, Lord Steward of the Emperors Instiniani Houshold, and General or Chief Captain of the tit. 17. in Guards, or the Governours of some Provinces or 1. 1. C de part of the Empire in the later Emperors times, Domesticis should be allowed to kiss him; which the very & Protect 1. learned Salmuthius in his Comment upon Guido 12. & Sal-Pancirollo, interprets to be commonly a killing Commentar, of the hand, as well as the fometimes receiving in Panciroll. of a falute or kiss of the mouth; which summi tut. 46.

honoris

bonoris loco tribuitur, faith Cuiacius, was esteemed to be the greatest honour, for they deserved as much as the punishment usually inflicted upon those who committed Sacriledge, which gave not due honour or respect unto those which were

thought worthy to be near their persons.

And were fo unwilling that any of their Servants, which were imployed in any eminent places about their persons or affairs, should when they had quitted their Offices or places, be reckoned amongst the Vulgar, as the Emperors Valentinianus and Theodofius did by their Rescript ordain, that qui sue quodammodo adsidere Majestati videntur, which had the honour to be near their persons, should post depositum officium (d) ab omni Indictionis onere seu Civilium seu Militarium judicum prorsus immunes, after they had left their places, be altogether free from all Taxes Civil or Military; for si quis lateri Principis ipsius permissu adhereat nobilis efficitur, (e) fuch of the Kings Servants as are attendant and near unto his per-1. & Tira- fon, are reputed Noble and Honourable, and their Virtue conjoyned with Riches, and their imployment about the Fountain of Honour may well deserve a preheminence above other mens Servants; when as the Service of fuch as re-Thinius ad ceived their honour from the (f) Prince, was as the younger Pliny faid in his time, pronum ad honoris iter, a ready way to honour and gentlenels, or the bearing of Armes, faith Sir John Ferne, may be obtained by the service of the Soveraign, according to the Rule of the Civil Law,

d Cuiacius Commentar. lib. 12. Cod. †ustiniani tit. 9.

e Aug. in l. openum col. quel. de nobilitate ca. 6.48.

Spurinam Epift. 5.

Law, with which that learned Civil as well as Common Lawyer was not meanly or little acquainted; adherentes lateri Principis, & eidem in officio quocunque (g) minimo ministrantes nobili g Sir John tantur, those which are in the Service of the Fernes glory. King, and near unto his Person, or imployed by of Generosuy him in the meanest Service, are in some fort so enobled as to claim the bearing of Armes, or Badges of Gentility; and Ideo & Coquum Principis in dignitatem haberi & (h) nobilem effe oportet, h Caffanaus & omnes famulantes Principi sunt in dignitate, in Catalog. therefore a Kings Cook ought to be fo much re-gloria mundi spected, as not to be denyed the like Priviledge, I parte confid. 48. and all the Kings Servants have a certain Dig- & Bartolus nity to them appertaining; and some of our in l. 1. C. de English Nobility have granted, as an Earl of dignitat. Stafford did to Mackworth one of his Servants, lib. 12. Insignia Nobilium, Coats of Armes to their Servants and Followers. And the French, Burgundians and Millanois, as well as many of our antient English Nobility, have heretofore permitted their Clients, and fuch as held their Lands of them (i), to take and use some part or refem- i Cassanans blance of the Armes of their Lords or Seignors. in Catalog. Wherefore the excellently learned Caffanaus, ha- gloria mundi ving travelled through the vast Volumes of the 1 parte Civil and Cæsarean Laws, and wrote his Book concl. 48. entituled Catalogus gloria mundi, in the beginning of the Reign of our King Henry the 8th. did not certainly stray or wander out of the paths of right reason, when he understands the Honour acquired by being the Servant of a Soveraign Prince,

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k Cassanaus
in 6 parte
Catalog. gloria mundi,
consid. 33,
38.19. l.4.
C. de dignitatibus l.12.
Tex. in l.
cum dilectus
& ibi gl. fi.

Prince, to be as well the cause of their Priviledges and Immunities, which he positively affirms to be ratione dignitatis Officii, by reason of the dignity of their Offices and Places, as the import and necessary use of their Offices and Places about the Person, health and safety of the Prince, in which the well-being of the Univerfality of the people and Body Politick are concentred: And that they are called (k) Curiales, Courtiers, ex quo cum Cura effe debent, in respect of the Cares which they take in the service of their Prince; & mitius agendum Curialibus & Aulicis quam aliis, & parcendum honori & verecundia domus Regia, & his qui pro domo & parentibus Regiis laborarunt, & the Servants of the King are to be more favoured than the Servants of other men, and a special regard ought to be had unto the honour of the House or Palace of the King, and those which do labour and take pains for the good thereof, and the Kings Family: that amongst the Domesticks or Servants of the King or Soveraign Prince, omnis ordo recipit splendorem a Principe, every degree or rank hath in some fort the resplendency and reflection of their Soveraigns imparted or communicated unto them. Et cum Senatores excusantur a fortiori Curiales & (1) Familiares Principum, nec ex eo eorum conditio deterior fieri debet cum circa Principem se obsequiales exhibent universis, and when Senators (or Parliament-men) are priviledged, by a greater reason ought the Princes Servants to be priviledged; neither should their condition

1 Cassawaus in 6 parte Catalog. gloria mundi, 29 consid. tion be made to be worse than theirs, seeing that when they do Officiate about the Prince, they do at the same time serve the People and Wealpublick; and recounting fome of the Priviledges of the Court Officers and Servants, doth amongst others agree, that Curiales in hoc privilegiantur quod pradia corum non possunt alienari sine solemnitate, that their Lands and real Estates cannot as other mens be aliened in a common and ordinary manner, but by special words and expressions of the certainty of the cause, and money given for it. Et istud est in favore ipsorum Curialium, ut Respublica habeat divites Curiales, & in tantum in hoc privilegiatur res Decurionum seu Curialum quantum res (m) minorum & Ecclefia m Curialium & in hoc pari passu ambulant ; And that in fa- de pradiis in vour of the Courtiers or Kings Servants, to the 1.f. C. Cassaend that the Commonwealth may be the better parte Cataferved by the Kings Servants being rich, and that log. gloria their Lands and real Estate are in that as much mundi, 25 priviledged, as the Lands and real Estate of In- consid. fants and the Church, (which was not a little) and as to that have equal Priviledges.

And further affures us, that in France the Kings Servants have a Priviledge, quod non (n) possunt conveniri coram Judice Ordinario loci n Cassanaus ubi habent Domicilium, they are not to be cited in Catalog. or prosecuted before the Ordinary Judge, or gloria mundi Court where they inhabit, (which all other 6 parte persons not priviledged are only to be) sed de-consid. 30. bent conveniri in Curia, & ibi causa eorum tractari debent maxime pro negotiis Curialibus coram Ma-

Ee 2 gistro

gistro Officiorum, aut magno Praposito domus Principis, but ought to be cited or compelled to appear in the Court, and there the cause ought to be tryed, especially if it concern any affairs of the Court, before the Lord Steward, or the Lord Chamberlain of the Kings Houshold; in aliis vero causis non concernentibus eorum statum Curialem, sed negotia privata sen particularia & suarum rerum, but in other causes not concerning the bufiness of the Court, but for any of the Kings Servants private or particular bufiness, there was at Paris in France in the Kings Palace a particular Chamber or Court called the Court of Requests, wherein by the Kings Letters called Commitimus, the causes of any of his Servants were to be decided and determined. Which honours and refpects due and given unto Kings and Princes Servants in fo many Neighbour Nations, may be enough to affure us, that that which our English Laws and Customes have afforded those that serve our Princes, ought not to have such outcries or complaints against them.

And that Sir Hugh Hamersley Knight, Lord Mayor of London in the Reign of King James, was not much if at all mistaken, when he stood so much upon his priviledge of the Kings special Servant or Lieutenant in the City of London, in the time or year of his Mayoralty, as he resolved not to give place unto the King of Denmarks Ambassador, who intended to come and dine with him, but to insist upon the honour and priviledge of his Place in that particular:

which

o Sir John
I inets Philoxenis, or
Treatife of
Ambassadors
2,6,237.

which the Ambassador understanding by Sir John Fines then Master of the Ceremonies, who was to attend him thither, thought it better to sorbear, as he did, that designed visit.

For a common and innate civility and respect, which should be used amongst Servants and all others, could never yet think it confonant to reason, that a Butchers Apprentice, or the Foreman of a trim Citizens Wives shop, should take place of the Servant of any of our Princes of the Blood, Nobility, or other Persons of Honour, much less of our Kings; there being degrees and precedencies of Servants amongst all people any thing acquainted with good manners and civility, proportioned and laid out according to the ranks or qualities of their Mafters; and in that also a confideration to be had of the nature of their Imployments, taught us by the difference betwixt a Footman or Coachman, and a Gentleman, wherein our gracious Soveraign did but preserve the Majesty due unto his Soveraignty, when (if report be true ) he did in the later end of the year 1666. prohibit the Duke of Newcastles Footmen the wearing of black Velvet Caps, (which the Kings Footmen usually do) whilst they attend his Caroch.

And if Histories, the monuments of Time and former Ages, were as they are not in that particular filent, a common and frequent, and almost every years experience will evidence how much the Honour of Princes are concerned in the respects or not respects of their Servants, by the

care

care and circumspection those resemblances of their Mafters greatness do take and use to preferve, and not diminish the least Iota or tittle of the Honour due unto those that sent them; the ftrict and piercing inspections of Princes into the qualities, greater or leffer, of those that are fent, and all and every the circumstances and ceremonies of their Receptions and Entertainments, Punctilioes, niceties and formalities infifted upon by Ambassadors; complaints of the least omissions or preteritions, exact and curious measures in the giving or not giving them respects to the full or height, with their strivings for place or precedency, even to bloody Combats betwixt the Ambaffadors of emulating Princes, as betwixt the French and Spanish Ambassadors not long ago in Holland, and a little after in England; the cares which Princes to whom they are fent have taken to give them fatisfaction, or to prevent their jealousies or discontents; their gifts and presents unto them, their Secretaries, and principal of their Servants, personal and peculiar honours and favours to Ambassadors, distinct from a greater to their Soveraign; and their fometimes bold and resoluteresusals where they found any diminution or neglects, of which Bodin Befolus, our learned Doctor Zouch, and Sir John Finet, in their learned Books de Marsellaer Albericus Gentilis Legatis & Legationibus, concerning Embaffies, and the Relation of the Earl of Carlifle's stout and prudent management of his Embassies into Muscour, will afford plenty of instances and examples.

With

With the more than ordinary civilities and respects used by divers Princes, Cities & Commonwealths, to Ambassadors of Princes and States in League or Friendship with them, in their passage to the Princes to whom they are sent, or return from their Embaffies, when the character or representation of their Prince being laid by, they are but little more than what they were in their former degrees or qualities, as our Sir Daniel Harvey fent to Constantinople, and the Earl of winchelfea in his coming home from the

like Imployment, can testifie.

And the great care which hath been taken by the Law of Nations, and all civilized Kingdoms, States and Commonwealths of Christendom, of the Priviledges of Ambassadors, which at the highest ofteem that can be given them are no other than Extraordinary Servants, which for their great abilities in Learning, State affairs, or Foreign Languages, were made choice of by their Soveraign, sometimes out of the Subjects and Nobility, not immediate Servants, and at other times some of the Servants and Officers in Ordinary, as of the Privy-Chamber, and Bed-Chamber, held by the Custome of the wifer and more prudent part of Nations to be fo facred and inviolable, as the Emperor Augustus made the putting to death of his Ambassadors and Heralds

Titurius and (p) Arunculeius by the Germans, p Suetonius to be the cause of a War made against them, and in vita Aufwore never to cut the hair of his head and beard guitt. untill he had punished them for that misdemea-

nor:

nor : And the Greeks and Komans, those great Masters of wisdom, prudence and civilities, and the Persians and many other Nations, made it to be some of their greatest concernments to vindicate any the least indignities or injuries offered or done unto their Messengers or Ambassadors: And our Laws have informed us, that in the 22th. year of the Reign of King Edward the 3d. one John at Hill was (q) condemned for High Treason, for the Murder of A. de Walton Nuncium Domini Kegis, missum ad mandatum Regis exequendum, the Kings Ambassador, for which he was drawn, hanged and beheaded; for, faith Sir Edward Coke, (r) Legatus ejus vice fungitur a quo destinatur, & honorandus est sicut ille cujus Vicem gerit & Legatos violare contra jus gentium est, an Ambassador represents him that fent him, and is to be honoured accordingly; for it is against the Law of Nations to violate or wrong an Ambassador. Et honor Legati honor mittentis est, & Proregis dedecus redundat in Regem, the honour of an Ambassador is the honour of him that fends him, and any dilhonour done unto him, redounds unto his Prince or Superiour. For it was in the Reign of King Richard the fecond, adjudged in Parliament to be High Treason to kill or violate an Ambassador of any Prince or Commonwealth, in the Case of John Imperiall (1) an Envoy or Ambassador 3 R. 2. 111. 18 from Genoa, flain by the malice of some of his Adversaries, and declared in Parliament, que le case estant examine & dispute inter les Seigniors

9 22 Aff. 49.1.

r Cokes 3 parte Institute, ca. 1.8.

f Rot. Parl.

& Commons, & puis monstre at Roy en pleine Parliament estrit illonques nostre Seignior le Roy declares, determinus & assentus que tiel fait & coupe est Treason, & crime de Royalt Majesty blemye en quel case il ne doit allower a nullui priviledge del Clergie, that the Case being examined and debated betwixt the Lords and Commons, and afterwards shewed to the King in full Parliament, it was then before the King determined and agreed, that the act was Treason, and a crime in derogation of Royal Majesty, in which no Priviledge of Clergy was to be allowed.

The great Gustavus Adolphus not long ago victorious King of Sweden, made the neglect and slighting of his Ambassadors by Ferdinand the second Emperor of Germany, a Justification or Proem of his after most famous and notable exploits against him in Germany, and his Ambassadors to be had in such regard, as they could safely travel through Fields of his subdued Enemies blood, conquered Towns, Cities sacked, and Armies ready marshalled to act and execute the diresull Tragedies of Battel and Bellona, and to be every where protected, and not sajured.

And within a few years last past, Don Mario the then Popes Brother being guilty only of an affront given at Rome to the Duke de Creguy, the French Kings Ambassador, by the Gorlairs the Popes Guards, the Popes Nuntio was in great displeasure sent away from the Court of France, and a War so threatned, as that imagined Spiritual Father of the Popish part of Christendom,

Shence

(218)

was with great loss of reputation enforced to submit to such Conditions as the King of France, claiming to be the eldest Son of the Church, would (besides the punishment of the Delinquents) impose upon him, and suffer a Pillar to be erected in Rome, to testifie the outrage and the severe punishment instituted for it, to the wonder of many Nations and people coming thither, that he who sold so many Millions of Pardons to the living and dead, should not be able to obtain of the Most Christian King a pardon and sorbearance of that Pillar of Ignominy, which continuing some years, was lately as a signal favour to the See of Rome permitted to be taken

down, and no more to be remembred.

t Lettre du Roya Melsieurs les Estates en le description de tout ce qui se est puffe dans le guerres entre Angleterre & les Estates, Gc. de l'An. 1 664. 14/ques l'conclusion de pass, p. 189.

And it was not without cause that our Royal Soveraign did in October 1666. by his (7) Letter to the Effates of Holland, and the United Provinces, justly charge upon them amongst other the causes of his War with them, injuries done unto him and his Subjects, by the imprisoning of the Domestick Servants of his Envoy, and likewise of his Secretary, and putting a Guard upon his House. And was so necessary an obfervance amongst Princes and Republiques, as howfoever they then faltred and misused their Wildoms therein, that Nation and their Union of Boores, Mariners, Artificers, and others, although many of them could hardly find the way to put off their hats, or use civilities unto their great and Princely Protectors the Illustrious Princes of Orange, have deemed it to be a part of the Subfistence

fistence and Policy of that now flourishing Republique, to be strict observers of all manner of civilities and respects to the Ambassadors of Princes. And the Swisses, and Mountainous petty Cantons or Republiques, who not long ago having massacred all their Nobility, and eternally as they hope prohibited the race of them from enjoying any Offices or Imployments in their Armies or Republiques, and can boast-Ambassade ingly answer inquisitive strangers or passengers, du Mareswith nos non habemus Nobiles, we have no No-chalde Bassality, can notwithstanding all their Military Sompierre en Barbarities, pay those fitting and well-becoming Suisse l'An. civilities, and due regards, to the Ambassadors of Foreign or Neighbour Potentates.

And may give us to understand, that the honours given to Ambassadors do not conclude that
there are no respects due to the Servants in ordinary of the Kings and Princes which sent
them: But that the honour and respect of the
Kings, manisested in the respect to their Servants, is not the cause and soundation of that
which is so punctually required and given to

Ambassadors.

When it is as certain, that great and often discontents and quarrels have been raised and kindled in the affairs and businesses not only of Nobility, and men of great Estates and Eminency, but of the vulgar and meaner fort of people, for injuries done to their Servants, who have been very unwilling to bear or put it up.

Ff2

Which

ul. eum qui 18. v. 1. de injur. P. L. item apud Lambeonem 15. 6. Et interdum cod. x L. Empereur de Legibus Ebraorum forensibus Annotat. Cod. cap. 9.9.2. yFleta lib.2. cap. I.

Which the Civil Law, and the Custom of many Nations, believed to be warranted by that Axiom ( " ) or Rule, that Domini pati dicuntur injurias qui suis fiunt servis, Masters do partake and fuffer in the injuries done to their Servants. And amongst the Jews, as their Rabbins exbound their (x) Laws, were for the time they dwelt with them fundi instar, as settled a Propriety as the Lands which they enjoyed. From which our Laws of England (y) do not dissent, when they adjudged, that injuriam patitur quis per alios quos habet in familia jua, ficut per fervientes & servos in contumeliam suam fuerint verberati, vulnerati, vel imprisonati, quatenus sua interfuerit operibus eorum non carnife; that a man may have wrong done him in those of his Family, as in the reproach done unto him by the beating, wounding, or imprisoning of his Servants, whereby he loseth their service.

A due consideration whereof, and that the honour and respect of Kings is and ought to be manifested in the respect to their Servants, probably was the cause which made william walworth, that valiant and brave Lord Mayor of Lendon in the Reign of King Richard the second, not able to withhold his loyal passion and indignation from knocking down with his Mace wat Tyler the Rebel, in the head of a mighty and unruly Army of Clowns, for abusing and making Sir John Newton Knight, (2) one of the Kings Servants sent on a Message to him, to stand bare before him on soot, whilst he sate on horseback.

Le Stows Surwey of London, and the History of Wat Tyler.

So as the people of England may in a less light than the New Lanthorn or Light men do now pretend unto, discern a reason for a greater respect to be given unto the Kings Servants in Ordinary, than of late they have given, when it is to no other, or no less than the Servants of Gods Vicegerent, fome of which enobled by their Birth or Creation, others by their Offices Enobleiffantes, enobling them, as the Treasurer, or Comptroller of the Kings most Honourable Houshold, who when they do happen, as many times not, to be of the Nobility, are ipso facto at the instant of the conferring those Offices upon them, or shortly after, made to be of the Kings Privy Councel: and with the Lord Chancellor, or the Lord Keeper of the Great Seal of England, President of the Kings Councel, Lord Privy Seal, Great Chamberlain, Constable, Marshal, and Admiral of England, Great Master, or Steward, and Chamberlain of the Kings most Honourable Housbold, have in this Kingdom, as hath been used in other Nations, been stiled the Officers of the Crown.

And our King Henry the 7th. taking a care that his Servants should be as well born, as virtuously educated, did call and elect to the service and attendance of his Privy Chamber, the Sons of his Nobility, and Gentlemen of the best houses and alliance in most of the Shires of England and wales. And King Henry the 8th. his a Scattles or Son, did by his Ordinances for Regulation of his Orders of EL Houshold, called the Statutes of Eltham, made An. 17 6 by the advice of his Privy Councel (a) in the 33 H.8. 17th.

17th. year of his Reign, command, That no Servant be kept by any Officers within the Court under the degree of a Gentleman, and that none be admitted into his Majesties service, but such as be likely persons, and fit for promotion; and that it Should be lawfull to all the Kings Counsellors, the King and Queens Chamberlains, Vice-Chamberlains, and Captain of the Guard, the Master of the Horse and Henchmen, and the fix Gentlemen of the Kings Privy Chamber, to keep every of them one Page to attend upon him in the Court, so alwayes that he be a Gentleman born, well apparelled and conditioned. That the fix Gentlemen of the Privy Chamber (bould be well languaged, expert in outward parts, and meet and able to be fent on familiar Messages, or otherwise to outward Princes, as the case shall require; and charged the Great Officers of his Houfhold in their several Offices and Places, that none (bould be admitted into any Place within his House, and especially those which beginning in low rooms and places, and are accustomed by course to ascend into higher, but such as be of good towardness, likelihood, behaviour, demeanour and conversation, and as nigh as they could should have respect that they be Personages of good gesture, countenance, fashion and stature; so as the Kings House, which is requisite to be the mirrour and example of all other within his Realm, may be furnished of Ministers elect, tryed, and picked for the Kings Honour, as to good reason and congruence doth appertain.

And by other Orders made in the 33th. year of his Reign, That no Officer of the Housbold should

keep

keep any Servant within the House under the degree of a Gentleman, and such as should be honest and of good behaviour. And by his Proclamation commanded, That no Vagabonds, Masterless Rascals, or other Idle persons, should come and harbour in the Court. And as he had a great respect for his Great Officers of State, so he had no small one for his more inferiour Servants, when in the Orders appointed for his Tables at meat in his Royal House he did ordain, that the Lord Great Chamberlain at his three Messes of meat, should have sitting with him the Vice-Chamberlain, Captain of the Guard, Sup-bearers, Karvers, Sewers to the King, Esquires of the Body, Gentlemen Huissers, and Sewers of the Chamber.

The Master of the Horse to have the Equirries and Avenors to sit with him, and Gentlemen

Penfioners as many as can fit.

And Queen Elizabeth in the first and third year of her Reign, intending (as the Preamble thereof declared) to follow the Godly and Honourable Statutes of Houshold of her Noble Progenitors, did by her Proclamation streightly charge and command, That no Vagabonds, Masterless men, Boyes, or Idle persons, be suffered to harbour in her Court.

Wherfore the Servants attending therein should not now be so much in the ill opinion, & causeless contempt of the Mechanick and vulgar part of the people, (for those which are ex meliore litto, better born and more civilly educated, cannot certainly so lose their way to a grateful acknowledgement

ledgement of their Princes daily protection and needed favours, as to villifie or flight his Servants, by imitating the fordid examples of a lefs understanding part of the people;) or want their due respects, if it shall be rightly considered, that our Ancestors and a long succession of former ages, were not so niggard or sparing of their well-deserved respects: When our Kings and Princes, and the wiser part of their people supposed to be in Parliament, did attribute so much unto them, and so very much trust and conside in them, as they did from time to time put no small power into their hands, and leave no small concernments of themselves and the Kingdom to their prudence, fidelity and discretion.

When the Lord Chancellor, or Lord Keeper of the Great Seal of England, who administreth the Oathes usually taken by the Lord Privy Seal. Lord Treasurer of England, Lords of the Kings most Honourable Privy Councel, Chancellor of the Exchequer, Master of the Rolls, Chancellor of the Dutchy of Lancaster, Justices of the Courts of Kings Bench and Common Pleas, Barons of the Exchequer, Kings Attorney and Sollicitor General, Serjeants at Law, Masters of Requests and Chancery, upon and before their admission into their feveral Places and Offices, nominates and appoints the (b) Custos Rotulorum, and Justices of the Peace in every County of England & water. fome few Franchises and Liberties excepted; and by his largely extended Jurisdiction committed unto his truft, doth by the Writs remedial of his Soveraign,

b 3 & 4 E.6

Soveraign guide and superintend the Cifterns and Streams of our Laws, those living waters which do chear and refresh our Vallies, and make them to be as a watered Garden. And with the two Lord Chief Justices, Master of the Rolls, the other Reverend (c) Judges, and the Masters of c Vide Oath Chancery, appointed to distribute the Kings of the Judges Justice according to the laws and reasonable in 18 E. 3. customs of the Kingdome, have their Robes and Salaries allowed, and are (as Justice Crake acknowledged in his argument (d) against the d M. S. of Ship-money) as the Kings Councel at Law, the his arenchief Justice of the Court of Common Pleas, be- ment against ing as is mentioned in a Manuscrip of Henry Earl the Shipof Arundel, copyed out of a book of George Earl money. of Shrowsbury, Lord Steward of the (e) houshold e M. S. of unto King Henry the leventh, and King Henry Henry Earl the eighth, (communicated unto me by my worl of Arundel, thy friend Mr. Ralph Jackson, one of his Majefties Servants in ordinary) a great Member of the Kings house, for whose favour, counsel, and affiltance in the Law, to be shewed to the housbould matters and fervants, he taketh an yearly Fee of the Butter of England of two Tuns of Wine, at two Terms of the year, which is allowed in the Court of houshold.

When the Justices of Peace in every City and County are, or should be the under Wheels in that excellently curiously framed Watch of the English Government (as the late blessed Martyr King Charles the first, when he so sadly forwarned the pulling of it in pieces by a mistaken Parliament, and the Rebellious confequences of

it, not unfitly called it ) are at their quarter Sessions under his pay and allowance, when the Affize of the bread to be fold in England, was in the fourth year of the Reign of King John, be-

268.

f Mat. Paris, ing thirteen years before his granting (f) of Magna Charta, ordained by the King, by his Edict, or Proclamation, to be firially observed under the pain of standing upon the Pillory, and the rates fer, and an Affife approved by the Baker of Teoffry Fitz-Peter chief Justice of England, the nas one of the Kings more especial Servants as to matters of justice refident and attendant in the Kings House or Palace, and by the Baker of R. of Thurnam, that Constitution and Assise being not at all contradicted by his Magna Charta, or that of his Sons King Henry the 3d.

> Which Affise of bread, contained in a writing of the Mar ballea of the Kings house, being by the confent of the whole Realm exemplified by the Letters Patents of King Henry the 3d. (e)in the gith. year of his Raign, was confirmed and

faid to be proved by the Kings Baker.

g Affifa Panis & Cervitia, 51 H. 3. b 9 H. 3. cap. 12.

By an Act of Parliament made in the oth. year of the Reign of that (b) King, if the King be out of the Realm, the chief Justices, one of which, if not both, mere then residing and attending in the Kings Court, were once in the year through every County, with the Knights of the Shires, to take Assies of Novel Diffeisin, and Mortdancester. in which, if there be any difficulty, it was to be referred unto his Justices of the Bench, there to be ended how well day on his manus

By

By an Act of Parliament made in the 6th year of the Reign of K. Edward the first, (i) Wine fold i 6 E. 1. ca. against the Assise, was to be by the Mayor and Bay- 15. liffs of London presented before the Treasurer and Barons of the Exchequer; who then relided in the Court or Palace of the King.

The Statute of (k) Westminster the 2. made k 13 E. 1. in the 13th. year of the faid Kings Reign, men- ca. 42. tioneth, That the KingsMarshal is to appoint the Marshal of the Kings Bench and Exchequer, the Criers and Virgers of that and the Court of Common Pleas, which at this day is done by and under the Authority of the Earl Marshal of England, who by his Certificate made by his (1) Roll of a personal service in a Voyage Royal ! Cokes 1 performed by those that held Lands or Offices in parte Insti-Capite, and by Knight Service, he discharged an tutes, \$ 102. Affessement of Esonage by Parliament, Superintendeth the cognisance and bearing of Armes of the Nobility and Gentry, and the duty of the Heralds and Officers attending thereupon. And with the Lord Great Chamberlain, before the unhappy change of the Tenures in Capite, and by Knight Service, into Free and Common m Lib. Rub. Socage, introduce and bring unto the King fuch in Scac. f.30 as were to do (m) Homage unto him for their Spelmanni Baronies or Lands. By an Act of Parliament Gloffar. in made in the 14th. year of the Reign of King voce Maref-Edward the third, and by the Kings Authority, calli, Fleta the Sheriffs of every County in England and lib. 2 cap.7. the Sheriffs of every County in England and wales, who are for the most part under the King the only Executioners of Justice in the Kingdom,

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are

n Elfings Mo dus tenendi Partiamenвит. 24.

by the Judges of every Circuit, the morrow after the Feast of All-Souls in every year, to the Lord Chanceller, or Lord Keeper of the Great Seal of England, Lord Privy Seal, Lord Treasurer, Lord Steward, (the later of which at the beginning and opening of Parliaments, is by his (n) Office to administer the Oathes of Allegiance and Supremacy to every Member of the House of Commons in Parliament) the Master of the Horse, Lord Chamberlain, Treasurer and Comptroller of the Kings most Honourable Houlhold, Chancellor of the Exchequer, with other of the Kings Privy Councel, who together with the Justices of both Benches, and Barons of the Exchequer, do out of the fix for every County, make choice of three, who are in a o Statute of Written Bill by the (o) Lord Chancellor, or

Lincoln, 9 E. 2. 6-14 E. 3. ca. 7. 34 H. 8 ca. 26.

Lord Keeper of the Great Seal of England, fhortly after presented to the King, who appointeth as he pleafeth one of every three prefented unto him as aforefaid for every County, to be Sheriff, by his Letters Patents under the Great Seal, for the year next following.

of Courts, sit. Chancery Ellings Mo-. dus tenendi Panliamen-\$ #11T.

And by Authority of the King and his Laws, p Cromptons the Lord Chancellor, or Lord Keeper of the Jurisdiction Great Seal of England, appointeth the Judges in every year their feveral Circuits, maketh and difchargeth all Justices of the Peace. And fuch Petitions as could not be dispatched before the end of Parliaments, were frequently adjourned to be heard and determined by the Chancellor;

and presenteth to all Parsonages or Spiritual Benefices in the Kings right or gift, which are under the value of 20 l. per annum, according to the antient valuation.

All the Records in the Courts of Chancery, Kings Bench, and Common Pleas, Juffices of Affise and Goal delivery, are to be safely kept by the Treasurer and Chamberlains of the Exchequer; which the Commons of England in Parliament, in the 46th. year of the Reign of King Edward the third, did in their Petition to the King call (9) the Peoples perpetual evidence; 946 E. 3. and our Kings of England have therefore in feveral ". 43. of their Reigns, fent their Writs and Mandates to the Chief Justices of both the Benches, to cause their Records for some times therein limin ted, to be brought into his Treasury, and entrusted with the Treasurer and Chamberlains thereof, in whose custody the (r) Standard for all r 9 H. 6. ca. the Weights and Measures of England is like- 6. wife kept.

By an Act of Parliament made in the 14th. year of the Reign of King Edward the third, Sheriffs abiding above one year in their Offices, may be removed, and new ones put in their place, by the Chancellor, Treasurer, and Chief (1) Baron of the Ex- (14 8. 3. chequer, taking unto them the Chief Justices of the ca. 7.

one Beneh or the other, if they be present.

Escheators who were and should be of very great trust and concernment in the Kingdom, betwixt the King and his (t) people, were to be t 14 E. 3. chosen by the Chancellor, Treasurer, and Chief ca. 5. Baron

Baron of the Exchequer, taking unto them the Chief Justices of the one Bench or the other, if they be present; (but are fince only made by the Lord Treasurer.)

. 14 €. 3.

By a Statute made in the 14th, year of the Reign of King Edward the 3d. the Lord Privy Seal, and other great Lords of the Kings Councel, are appointed to redreft in Parliament delayes and errours in Judgement in other Courts.

20 E. 3. ca. 6.

By an Act of Parliament made in the 20th. year of the Reign of the aforesaid King, the Chancellor and Treasurer were authorized to hear complaints, and ordain remedies concerning gifts and rewards unjustly taken by Sheriffs, Bayliffs of Franchises, and their Under Ministers; and also concerning mainteiners and embracers of Juries, taking unto them the Justices and other Sage persons, such as to them seemeth meet.

By an Act of Parliament made in the 31th. year of the Reign of that King, (u) the Lord Chanu 31 E. 3. cellor and Treasurer shall examine erronious Judge-

ments given in the Exchequer Chamber.

And the Chancellor and Treasurer, taking to them Justices and other of the Kings Councel, as to them seemeth, shall take order and make Ordinances touching the buying and selling of Fish.

By feveral Acts of Parliament made in the 37th. and 38th. year of his Reign, Suggestions made by any to the King, shall be sent with the party making them unto the Chancellor, (x) there to be heard and determined, and the Profecutor was to be

x 37 E. 3. ca. 18. 6 38 E.3.14.9.

Ca. 33

be punished if he prove them not. And that upon untrue suggestions, the Chancellor should award

damages according to his discretion.

By an Act of Parliament made in the 11th. year of the Reign of King Richard the second, the keeping of Assign in good Towns are at the request of the Commons in (y) Parliament, referred to ca. 11. the Chancellor, with the advice of the Judges.

By an Act of Parliament made in the 13th. year of his Reign, in every pardon for Felony, Murder, or Treason, the (z) Chamberlain or Under 213 R. 2. Chamberlain was to endorse upon the Bill the Name ca. 1.

of him which sued for the same.

By an Act of Parliament made in the 20th. year of his Reign, no man shall go or ride armed, except the Kings Officers or Ministers (a) in doing a 20 R. 2. their Office.

By an Act of Parliament made in the first and fecond year of the Reign of K. Henry the 4th. no Lord is to give any Sign or (b) Livery to any Knight, b 1 & 2 H. Esquire, or Yeoman, but the King may give his ho- 4. ca. 21. nourable Livery to his menial Knights and Equires, and also to his Knights and Esquires of his Retinue, who are not to ne it in their Counties, but in the Kings presence. The Constable and Marshall of England for the time being, and their Retinue of Knights and Esquires, may wear the Livery of the King upon the Borders and Marches of the Realm in time of war; the Knights and Esquires of every Duke, Earl, Baron, or Baneret, may wear their Lia veries in going from the Kings House, and returning unto it; and that the King may give his honourable

rable Livery to the Lords Temporal whom pleafeth him. And that the Frince and his menials may use and give his honourable Livery to the Lords and his menial Gentlemen.

By an Act of Parliament made in the first year of the Reign of King Henry the 6th. the Lords of the Councel may assign money to be counced in as many places as they (c) will. A Letter of request may be granted by the Keeper of the Privy Seal, to any of the Kings Subjects, from whom Goods be taken by the King of Denmark, or any of his Subjects.

By an Act of Parliament made in the tenth year of his Reign, the Mayor of London shall take his Oath before the (d) Treasurer of England, and Barons of the Kings Exchequer, wherein he shall be charged and sworn to observe all the Statutes touching weights and Measures.

By an A& of Parliament made in the eleventh year of his Reign, Fees, Wages, (e) and Rewards due to the Kings Officers, were not to be comprized within the Statute of Resumption, made in the 28th: year

of the Reign of the King.

By an Act of Parliament made in the third year of the Reign of King Henry the 7th. for punishments of Maintenance, Embracery, Perjunies, Riots, and unlawfull demeanors of Sheriffs, and unlawfull Assemblies, it was (f) ordained, That the Chancellor and Treasurer of England for the time being, Keeper of the Kings Privy Seal, or two of them, calling unto them a Bishop and a Temporal Lord of the Kings most Honourable Councel, and

c 1 H. 6,

d 10 H.6.

e 11 H, 6.

f 3 H. 7.

CA. I.

the two Chief Justices of the Kings Bench and Common Pleas for the time being, or other two Justices in their absence, may upon Bill or Information put to the faid Chancellor for the King, or any other, have authority to call before them by writ or Frivy Seal the faid misdoers.

By an Act of Parliament made in the 12th. year of his Reign, (g) Perjury committed by un- g 11 H. 7. lawfull maintenance, embracing, or corruption of ca, 25. Officers, in the Chancery, or before the Kings Countel shall be punished by the discretion of the Lord Chancellor, Treasurer, both the Chief Justices, and the Clerk of the Rolls; and if the Complainant prove not, or pursue not his Bill, he shall yield to the party wronged his costs and damages.

By an Act of Parliament made in the 19th. year of his Reign, (h) Ordinances made by h 19.H. 7. Fellowsbips of Crafts, are to be approved by the ca. 6. Chancellor, Treasurer of England, Chief Justice of either Benches, or three of them, or both the Justices of Affise in their Circuits, where such Ordinances

Shall be made.

By an Act of Parliament made in the first year of the Reign of King Henry the 8th. the Lord Chancellor or Lord Keeper, (i) may ap- i 1 H. S. point two, three, or four persons, to receive Toll or c.9. Custome, and to imploy the same upon the repair of the Bridge of Stanes, in the County of Middlefex, and to yield accompt thereof.

By an Exception in an Act of Parliament made in the 14th and 15th. year of his Reign, k 14 6 15 touching (k) Aliens, and their taking of Appren- H. 8.c. 2.

tices, any Lord of the Parliament may take and retain Estrangers Joyners and Glasiers in their

Service.

In the Act of Parliament made in the 21th. year of his Reign, prohibiting Plurality of Benefices, and the taking of Farms, under great penalties, there are Exceptions, for the (1) Kings Chaplains not sworn of bis Councel, and of the Queen, Prince, or Princess, and the Kings Children, Brothers, Sisters, Unkles or Aunts, the eight Chaplains of every Archbishop, fix of every Duke, five of every Marquess and Earl, four of every Viscount and other Bishop, the Chancellor, and every Baron of England, three of every Dutchess, Marquioness, Countess and Baroness being Widdows. And that the Treasurer and Comptroller of the Kings House, the Kings Secretary, Dean of his Chappel, the Kings Almoner, and Master of the Rolls, may have every one of them two Chaplains, the Chief Justice of the Kings Bench one Chaplain, the warden of the Cinqueports for the time being, the Brethren and Sons of all Temporal Lords, may keep as many Benefices with Cure, as the Chaplains of a Duke or Archbishop; and the Brethren and Sons of every Knight, may keep two Parsonages or Benefices with Cure of Souls. And that the Widdows of every Duke, Marquess, Earl or Baron, which shall take to Husband any man under the degree of a Baron, may take such number of Chaplains as they might when they were Widdows, and every such Chaplain have the priviledge afore-Said.

ca. 13.

121 H. 8.

By an Act of Parliament made in the same year and Parliament, a Commission was granted to (m) Cuthert Bilhop of London, Sir Richard m Cap. 16. Brooke Knight, Chief Baron of the Exchequer, John More one of the Justices of the Kings Bench, &c. to assign how many Servants every stranger shall keep within St. Martins le Grand London.

By an A& of Parliament made in the 23th. year of his Reign, (n) Commissioners of n 23 H. 8. Sewers to survey Streams, Gutters, Letts, and ca. 5. Annoyances, are to be named by the Lord Chancellor, Lord Treasurer, and two Chief Justices, or any three of them, and their Decree to bind the Kings and all mens Lands.

By an Act of Parliament made in the same year and Parliament, (0) the prices of the Tun, Butt, o Cap. 7. Pipe, and Hogshead of French Wines, Sack, & Malm-sey, shall be assessed by the Kings Great Officers.

By an Act of Parliament made in the 25th.
year of his Reign, (p) Butter, Cheefe, Capons, p 25 H. 8.
Hens, Chickens, and other Victuals necessary for ca. 2.
mens sustenance, are upon complaint of enhancing,
to be affessed by the Lord Chancellor of England,
Lord Treasurer, the Lord President of the Kings
most Honourable Privy Councel, the Lord Privy
Seal, the Lord Steward, the Lord Chamberlain,
and all other Lords of the Kings Councel, the
Treasurer and the Comptroller of the Kings most
Honourable House, the Chancellor of the Dutchy of
Lancaster, the Kings Justices of either Bench, the
Chancellor, Chamberlains, Under-Treasurer, and
Hh 2

the Barons of the Kings Exchequer, or seven of them at the least, whereof the Lord Chancellor, the Lord Treasurer, Lord President of the Kings

Councel, or the Lord Privy Seal to be one.

By another Act of Parliament made in the fame year and Parliament, (q) the prices of Books upon complaint made unto the King, are to be reformed by the Lord Chancellor, Lord Treasurer, or any of the Chief Justices of the one Bench or the other, by a Jury or otherwise.

By another Act of Parliament made in the fame year and Parliament, (r) every Judge of the Courts of Kings Bench and Common Pleas, the Chancellor and Chief Baron of the Exchequer, the Kings Attorney and Sollicitor for the time being, may have one Chaplain, who may be absent from his Benefice, and not resident.

By an Act of Parliament made in the 28th. year of the Reign, (f) the Lord Chancelion, Lord Treasurer, Lord President of the Kings most Honourable Councel, Lord Frivy Seal, and the two (hief Justices of either Bench, or any four or three of them, are impowered by their discretions to fet the prices of all Wines by the Butt, Tun, Pipe, Hogshead, Puncheon, Tearce, Barrel or Rundlet, ( the pint of French Wine being then fet at I d. per pinte.)

By an Act of Parliament made in the 33th. year of his Reign, (t) the Chancellor of the Dutchy of Lancaster, Courts of Augmentations and First-Fruits, Master of the Wards and Liveries. Treasurer of the Kings Chamber, and Treasurer

t 33 H. 8. ca. 28.

q 25 H. S.

1 Cap. 16.

128 H. 8.

CA. 14.

ca. 15.

(237)

of the Court of Augmentation, and Groom of the Stool, may each of them retain one Chaplain, who may be absent from their Benefices, provided they be twice a year at their Benefices with Cure of Souls, by the space of eight dayes at a time.

By an Act of Parliament made in the 34th. and 35th. year of his Reign, (u) the Lords u 34 & 35 authorized by the Statute of 28 H. 8. cap. 14. H. 8. ca. 7. to set the prices of Wines in gross, may mitigate and enhance the prices of Wines to be sold by

retail.

By an Act of Parliament made in the 37th. year of his Reign, for (x) the settlement of x 37 H. 8. Tithes betwixt the Parsons, Vicars and Curatas of ca. 12. London, and the Inhabitants thereof, the Archbishop of Canterbury, Lord Chancellor, Lord Treasurer, Lord President of the Councel, Lord Privy Seal, Lord Great Chamberlain of England, with some of the Judges, were chosen Arbitrators to make a sinal conclusion betwixt them, which shall be binding by their Order under any six of their hands.

By an Act of Parliament made in the same year, (y) the Lord Chancellor, Lord Treasurer, y Cap. 23. Lord President of the Kings Councel, Lord Privy Seal, and the two Chief Justices, or three, four, or sive of them, are yearly to set the prices of Wines; And upon refusal to sell after those rates, the Mayor, Recorder, and two antient Aldermen of the City of London, not being Vintners, shallenter into their Houses, and sell their Wines according to those rates.

By

By an Act of Parliament made in the 7th. year 27 8. 6. of the Reign of King Edward the 6th. (Z) no person having not Lands or Tenements, or which cannot dispend above 100 Marks per annum, or is not worth 1000 Marks in Goods or Chattels, not being the Son of a Duke, Marquess, Earl, Viscount, or Baron, shall keep in his house any greater quantities of French Wines then 10. Gallons.

By an Act of Parliament made in the same year, (a) the offenders in the Assign of Wood and Fuell, if they be poor and not able to pay the Forfeiture, may be by a Justice of Peace, or any other

of the Kings Officers, put on the Pillory.

By an Act of Parliament made in the first year of the Reign of Queen Mary, (b) if the Justices of Peace do not put the Act of Parliament in execution, touching the repair of the Causway betwist Sherborn and Shastsbury, in the Counties of Dorset and Somerset, the Lord Chancellor or Lord Keeper shall upon request grant Commissions to certain discreet persons to do it.

And by an Act of Parliament made in the 43th. year of the Reign of Queen Elizabeth; (c) the missimployment of Lands, Goods, Chattels, or Money, given to Hospitals and Charitable uses, are to be reformed by the Lord Chancellor, or Lord Keeper of the Great Seal of England, and the Chancellor of the Dutchy of Lancaster for the time being, in their several furisdictions.

Which amongst many other, may be some of the causes or reasons that the People of England,

and Commons in Parliament, giving in former

times

2 Cap. 7.

b 1 Mar.

c 43 Eliz.

times as they ought to do, those grand and more then ordinary respects, and many more not here repeated, unto the Great Officers of the Crown, Royal Houlhold, and other the Servants of our Kings and Princes, and lodging fo many of their grand concernments in their care and trust, did not trouble themselves, or any of our Parliaments, with any Petitions (there being none to be found amongst the Records thereof) against those antient, rational, just and legal Priviledges of the Kings Servants in Ordinary, nor any Lord Steward, Lord Chamberlain, or other Officers of the Kings most Honourable House, for allowing or maintaining it, (although there were fome against Protections, granted to fome that were not the Kings Servants in Ordinary ) nor hath there been any Statute or Act of Parliament made, to take away, or fo much as abridge those well deserved Priviledges which have in all ages, and by fo good warrant of right reason, Laws of Nations, and the Laws and reasonable Customes of this Kingdom, appeared to be so much conducing to the Weal publique, and the affairs and bufiness of the Head or Soveraign: For surely if there had been but the least suspicion of any Grievance in them meriting a remedy, there would not have been such a filence of the peoples Petitioning, or Complaints against it, either by themselves, or their vigilant and carefull Representatives in the Commons House in Parlia. ment, which heretofore feldom or never omitted the eager pursuit, and Hue and Cry after any thing

thing of Grievance which molested them. And if there had been any fuch Petitions and Complaints in Parliament, that Great and Honoura. ble Court not giving any order, or procuring any Act of Parliament against the Priviledges of the Kings Servants, is and may be a convincing argument, that such Complaints or pretended Grievances were causeless, unfitting or not deferving the remedies required; and will be no more an evidence or proof against what is here endeavoured to be afferted, then the Petition of the Commons in Parliament in the 21th. year of the Reign of King Edward the 3d. against the payment of 6 d. for the feal of every Original Writ in Chancery, and 7 d. for the sealing of the Writs of the Courts of Kings Bench and Common Pleas, which hath ever fince been adjudged reasonable and fitting to be paid; then the many Petitions against the antient legal and rational payment of Fines upon Original Writs in Chancery, then the Petitions of Non-conforming Ministers, then the many designed and defired Acts of Parliament not found to be reasonable or convenient, and therefore laid by and miscarried in the Embrios; or multitudes of other Petitions in our Parliaments, or then the many late Petitions for an imaginary liberty of Conscience, can or will be for what was defired, and not thought fit at those or any other times to be granted.

Which antient Priviledge of the Kings Servants, not to be Arrested without leave, was not fo limited to their Persons, but that their Lands, Estates, and Goods, participated also of that Privilege, not to be molested by any Process or Suit of Law, without Licence first obtained of the Lord Chamberlain of the Kings most honourable Houshold, or unto such other great Officers therein, to whose Jurisdiction it belonged.

## CAP. IV.

That the Priviledges and Protections of the Kings Servants in Ordinary, by reason of his Service, is, and ought to be extended unto the Priviledged parties Estate both Real and Personal, as well as unto their persons.

Or if we may, as we ought, believe antiquity, and its many unquestionable authorities, and our Records, which as to matters of fact, judgements, pleas, writs, therein allowed, Records of Parliament, and the Grants of our Kings by their Letters Patents under the Great Seal of England, being the Publique Faith of the Kingdome, from and under which, most of the peoples Real Estates and Priviledges, have had their originals and establishments ( not the falfely called Publique Faith, which afterwards proved to be Bankrupt, and was until then the Medea or Witch of the late incomparably wicked Rebellion) were alwayes so impartial and credited, as not to have their truth fo much as suspected. That Priviledge was not only indulged and allowed to their Persons, but to their Lands and Estate also, as will plainly appear by the course and Custome of the Law in former ages, and amongst

amongst many others not here enumerated, was not understood to have been either unusual or illegal in that which was granted to Sir John

Staunton Knight.

d Rot. Pat. 29 E. 3. m. 27.

By King Edward the 3d. in the 29th. year of his Raign, in these words, Omnibus ad quos &c. Salutem (d) considerantes grata & laudabilia obsequia tam nobis quam Isabella Regina Anglia Matris nostræ charissima, per dilectum & fidelem nostrum Johannem de Staunton, impensa & proinde. Volentes personam ipsius Johannis (suis condignis meritis exigentibus ) honorare ipsum Johannem Camera nostra militem & familiarem quead vixerit tam tempere quo extra curiam nostram absens quam tempore, quo ibidem presens fuerit duximus retinendum. Ac de gratia nostra speciali ipsum Johannem, Terras, Tenementa, Bona, & Catalla sua, quecunque ac universos legales tenentes suos omnium & singulorum maneriorum suorum in protectionem & defensionem nostrum suscepimus specialem. The Kiug to all unto whom these presents shall come sendeth greeting, We confidering the well accepted and laudable Services, done as well unto us, as our dear Mother Isabel Queen of England, by our trusty John de Staunton, and being therefore willing to honour him according to his deferts, have made the faid John a Knight of our Chamber, and one of our Servants in Ordinary whilst he lives, as well when he shall be absent as present. And of our especial grace, have taken into our special protection the said John de Staunton, and all his Lands, Tenements, Goods, and Chatels, and like-

likewiseall his Tenants of his Manors: Cmnibus & fingulis nostris fidelibus tenore presentium firmiter inhibentes ne eisdem Johanni, Terris, Tenementis, Bonis, seu Catallis suis aut legatibus tenentibus maneriorum pradictorum malum molestiam prisas, aus aliud impedimentum inferunt vel faciunt indebite vel injuste, & si quis eis injuriatum vel forissactum fuerit, id eis debite reformari & corrigi faciunt : Streightly charging and prohibiting all our good Subjects, that they do not unduly or unjustly endamage or molest the faid John de Staunton, his Lands, Tenements, Goods, Chatels, or his faid Tenants, and if any shall injure or wrong them therein, that you do duly cause it to be reformed and amended.

And the Writs of Protection which our Kings of England have fometimes granted unto fome which were imployed in their Service upon some special motives and reasons, and were not his manial or domestick Servants, having been very often, if not alwayes, made and granted not only to protect the persons of such (e) as were not e Register of the Kings Servants in Ordinary, but specially Writs, tit. imployed upon extraordinary occasions, but de Protection non molestando res terras tenementa homines 22.23.26. ( which in the legal acceptation, antiently fignified their Tenants, as well as their Manial or Houshold Servants, especially when instead of Rents, or for some abatements made of them, they Plowed and Sowed their Landlords Land, Reaped their Corn, and did many other Services belonging to Husbandry ) bona Catalla & poffeffiones

(244)

fiones suas, not to molest, trouble, or permit them to be troubled in their Estates Real and Personal, Lands, Tenements, Servants, Tenants, Goods, Chatels, and Possessions, and do agree with those priviledges which our Neighbour Princes of Europe, and many other Nations, have

allowed their Servants.

And fuch or the like Protections, are, and have been, an antient allowed priviledge, not only to Foreign Embassadors, but their Assistants, Servants, Goods, and Chatels, in the Dominions and Territories of Kings and Princes to whom they are fent, and where they are relident. sane que potest tanta vis esse privilegii persone Legatorum, fi privilegium & istis accessionibus non conceditur, saith Albericus Gentilis; And truly to what purpose will the priviledge of (f) Embassadors be or enure, if the Protection of their Estates, as well as their persons, should not attend their employments; for where their persons may of the Kings not be summoned, cited, or inforced to lay by, or forfake his Service in the attendance upon the process of any of his Subordinate Courts of Justice, & there cannot by the rules of Common Justice, and our Magna Charta, that great piece of right reason and Justice, beany Judgement had or obtained without appearanc against them, or any Execution thereupon against their Goods or Estate. And it being so just and necessary for the Plaintiffs to demand Leave or Licence for the compelling of them to appear to their actions, it will be as necessary & becoming certainly to demand a fecond

f Albericus Gentilis de legationibus, lib.2.ca.15. Servants.

fecond Leave or Licence to take out process of Execution upon any judgement obtained, when as in the ordinaay course of our Laws, and the intendment thereof, every Plaintiff, as the Records of our Courts of Justice will abundantly testifie, is (as it were by Petition) to pray and ask leave to take out his Writ of Execution; for that as the Judges may in their inferior Orbes fometimes find cause to Arrest or stay for a time fome Judgements and Executions, fo certainly, and much more in the Superior, may the urgency of some present and necessary Service of the King, and the Weal Publique (the Kings Service and the publique being as inseparable as his Person and Authority, Body Politique and Corporal) require some pause, or a Licence first to be demanded.

Such requifites and privileges drawn from the g Elfing in fame Fountain of priviledges and reason, being his book of no otherwise in their effects then as to the joynt the antient priviledges of Persons and Estates, then the pri- and present viledges of Parliament, and the Protections al- holding Parlowed (2) unto the Peerage and Members of the liaments. House of Commons, and their Manial Servants, h Broke 6. in order to that publick affair and fervice of the 24.29. Fitz-King, who doth not limit those favours only to Herbert N. their Persons, and the personal service of their B. 42. Servants attending upon them, but do for that Cromptons time comprehend and secure their Estates both furifdiction of Courts. Real and Personal, and will not willingly per- Dyer 187. mit so much as the minds of any of the Mem- 42. Coke bers of (h) Parliament to be vexed by any 4th. part Indifturbance Stientes 227.

disturbance of process, or legal proceedings. whilft they are employed and intended by Law to be only busied in those weighty occasions. which they would be, if the Real and Personal Estates of themselves, or Servants which attended upon them, were molested and troubled; and therefore King Henry the 8th. in his Speech to the Judges in the Case of his Servant Ferrers. and a Member of the House of Commons in Parliament in the 33th. year of his Raign said, that his Learned Councel at Law had inform'd him. that all Acts and Process coming out of any Inferiour Courts, must for the time cease and give place to the Parliament as the highest of Courts. and that whatfoever Offence or Injury is in Parliament time offered to the meanest Member of the House of Commons, is to be adjudged as done both against the King and the whole Court of Parliament; which was then affented unto by all the Judges of England then present, faith (i) Mr. Crompton, and confirmed by divers reafons.

i Crompton Jurisdiction of Courts, tit. Parl.

And well may it be so, when it is and hath been not unusual for the Judges of the Court of Kings Bench or Common Pleas (which do stand upon a less but legal Foundation) to free or unattach Goodsattached in the City of Lond. by their course or custom of Process of a man that had occasion to attend either of those Courts (ik) concerning some Suit or Suits there depending, as to procure a Capias utlegatum against one, & c. and declare it to be a priviledge or liberty belonging unto those Courts

k Rastals vet. lib. intruc. tit. cerciorar. sur. brev. de priviledge, 8.

Courts in their several Jurisdictions to protect. fuch persons in veniendo versus candem Curiam ibidem morando, & inde ad propria redeundo absque arrestatione Corporum, Equorum, Bonorum, feu Catallorum, in comming to the faid Court or Courts there abiding, or returning homewards without any Arrest of their Bodies, Horses, Goods, and Chatels by any process out of any Inferiour Court: Et habere debeant salvum & securum conductum sub protectione & defensione (1) Regis & 1 Ibidem tit. Progenitorum suorum; and in that respect were to Privil. 9. have afafe conduct of the King & his Progenitors, 440. and to be in their Protection; and it was in former and less factious times, not unusual to have fuch or the like Protections of our Kings for the Lands and Goods of the persons protected, as well as for their persons, to be allowed in our Courts of Justice witness the Writ to be found in the Register. before or much about the 11th. year of the Raign of King Edward the 3d. entituled a Writ of Trespass, contra protectionem Regis, for molefting or troubling a man protected by the King, directed to a Sheriff to attach the Defendant, in these words of the commanding or mandatory part thereof, Oftensur quare cum suscepimus in protectionem & defensionem nostram pradictum A. himines terras (m) res reditus, & m Register omnes posessiones suas, omnibus & singulis inhiben- of Writs tes, ne quis eis injuriam, molestiam, damnum 121. tit. de inferret, aut gravamen idem B. Bona & Catalla inquirend. de pradicti A. dum sub protectione nostra, sic fuit ad transgression valentiam centum Solidorum apud H. inventa vi &

armis

armis cepit & asportavit, & in homines & servientes suos insultum fecit, &c. per quod servitia sua amisit, & alia enormia, &c. ad grave dampnum, &c. & contra protectionem nostram pradictam, & contra pacem nostram, & habeas ibi nota plegiorum, &c. To shew cause, whereas when we took into our Protection the aforefaid A. his Lands, Goods, Tenants, and all that he possessed, prohibiting all and fingular whatfoever, that no man do or cause to be done unto him any injury, damage, or trouble, the said B. the Goods and Chatels of the faid A. whilft he was under our Protection, to the value of five pounds at H. by force and arms did take, and carry away, and made an affault upon his Tenants and Servants, &c. whereby he lost their Services, & and did other injuries unto him, &c. to his great damage, against our Protection and Peace; and have you there (at west minster) the names of his pledges or fureties, &c.

With good reason therefore, and much more in the case of the Kings Servants, when it would be of a small avail for any man to be Priviledged or Protected in his person whilst he is employed in the Kings Sercice, when all his Lands shall be seized or extended, his Goods and Personal Estate taken away, his Wise Children and Family starved, undone, or ruined, and like Job stripped of all he had, may be at liberty to complain of his misery and calamity, and hear an impatient Wise (n) blame him for being so n Job 9.v.1. careful to serve a King that would not or could

not

not protest him; And as little it would be for the good or dispatch of the Kings affairs, when it cannot be fo well done as otherwise it would. by a man whose foul is grieved, the faculties of his mind and understanding weakned and aftonish'd, his thoughts racked or tormented with cares and apprehensions of damage, losses, dangers, or difgraces, and cannot rest or follow his bufiness as otherwise he would do but be looking homeward, either to provide some remedy or comfort, as well as he can, for his forrowfull Wife and Children, to which many times his presence is so requisite, as nothing can help or relieve them or himself without it; and that furely which ferves for a Reason or Justice in the case of a person not the Kings Servant in ordinary, where he is specially imployed in his fervice, should be asneceffaryor reasonable, or rather more, in the case of his Servant in ordinary, who in fuch a trouble and fadness as appeared in the face of the good Nehemiah, the (o) Cup-bearer o Nehemiah of King Artaxerxes, when he heard of the great c. 1. v. 2. 6 affliction and reproach of his Brethren at the 3.c. 2. v. 2. diffressed Jerusalem, must when he shall be asked as Nehemiah was, why is thy countenance sad, seeing thou art not fick, it is nothing else but forrow of heart, be inforced to declare his forrows to his Soveraign, who when he shall be informed of the cause of it, must be constrained to do as that tender-hearted King did, to give fuch a troubled Servant leave to depart to his distracted Estate, and in the mean time want his fervice.

Kk

CAP.

## CAP. V.

That the Kings Servants whilst they are in his fervice, ought not to be Utlawed or prosecuted in order thereunto, without leave or license first obtained of the King, or the Great Officers of his most H. nourable Housh ld, under whose several Jurisdictions they do officiate.

Nd to as little or no purpose would that antient and just Priviledge of the Kings Servants in ordinary, not to be arrested, troubled or imprisoned without leave first obtained, profit them, if whilst they shall be busied in attending the person of the King, or some other of his affairs, they may be fued to an Utlary, and forseiture of all their Goods and Personal Estate, purout of the protection of the King and his Laws, and thrust under the many damages, inconveniences and incapacities which do waylay and fall upon Utlawed persons, and will be hugely contradictory to the right reason and intention of our Laws; neither can any Sheriff retorn upon an Original Writ, retornable in the Court of Common Pleas, to which and no other Court (except in the Court of Kings Bench, in Actions of Trespass, or upon the Case importing a breach of the Peace) in all Civil Actions, the profecution of Writs to the Utlary doth only and properly appertain; or upon a Bill of Middlesex, a great encroacher upon the Rights and

and Jurisdiction of the Court of Common Pleas, and a greater upon the Rights and Liberties of the people; or an Action entred in the Sheriffs Courts in the City of London, or of any other City or Corporation, that any of the Kings Servants who were not wont to be either Beggars or Runagates, nichil habet, nec est inventus, (the later of which however now difused, was antiently never omitted, but as a companion infeparable upon fuch Retorns of Writs, went together with the former ) when as the Offices and Places in the Kings Court, were not usually fo poor or unprofitable, as that they should be worth nothing, or those that enjoyed them so willing to leave them, as to run away from them.

And then certainly if by Law any fuch Retorns cannot in the case of the Kings Servants in ordinary, be justly or legally made, nor any Procels of Capias, or to arrest, executed against them, without a leave or license first obtained; nor any Utlary without a Capias, after that an alias Capias, and afterwards a pluries Capias, being all three of them with fifteen dayes betwixt the Testes and Retorns first and successively to be retorned, as now the manner of retorning them of course is usually, before any Exigent can be awarded in order to an Utlary, if the Defendant do not appear before unto the Action, whether Civil or Criminal, to prevent it; which so often repeated process and warnings the Law doth so strictly enjoyn, as in the Reigns of King Henry the K k 2

P Brook tit. Utlary 62. C 3 H. 4. the 4th. and King Henry the 6th. (p) Utlaries have been reverled, for that the Exigent was awarded to Utlaw the Defendants upon the

Second Capias.

There cannot be any just or legal possibility of Utlawing of them, although they be neither Great Officers of State, nor of the Kings Privy Councel, or of the Baronage, who by reason of their eminencies, high degrees, and qualities, are alwayes to be excepted from those ordinary kinds of Process.

For if any of the Kings Servants in ordinary should be wronged by any such false Retorns, which must necessarily fore-run and open the doors of the Process of Exigent, the Prologue or Ushers to an Utlawry, they are and ought to be as justly entituled, as any of the common people of England are to an Action of the Case, against the Sheriff or any other who shall make or cause to be made any false Retorn, quod nichil habet, that he had nothing, (when as many of them have good, or great, or fome Estates in Lands and Freehold in the County or place where the Action is laid ) or, quod non est inventus, was not to be found in his Balywick; the later of which was in former ages used to be so ill refented, as in the Reign of King Edward the 3d. an Action was brought against one for retorning upon a Writ, quod non est inventus, that he was not to be found, whereby a Capias or Writ to arrest him was awarded against him.

And as much against the mind of the Law it would

would be, and a very great distance from truth and reason, that the King in the usual process and proceedings unto or towards an Utlary, should cause an Original Writ to be directed unto the Sheriff of Middlesex, who is by Law to execute no Writ in his Court or Palace, to command one of the Kings Servants to pay a Debt demanded by the Plaintiff; or if he did not, to fummon him to appear before his Justices of the Court of Common Pleas at Westminster, to shew cause why he did not, when his own Officers of his most Honourable Houshold, upon leave obtained to profecute the Debtor in the Court of Common Pleas, were more properly to have made that fummons, should upon a nichil habet nec est inventus, that he hath nothing, or is not to be found retorned upon fuch an Original Writ by Clerks or Attorneys of course, without the warrant or privity of the Sheriff in whose name it is retorned, and to whom it is directed, fuffer a Capias in his Name, and under his Seal, to arrest or take his body, to be issued out against his Yeoman of the Robes, or his Physicians in ordinary, or some other of his Servants in ordinary necessarily attending him, not by courses, (as many other are by the indulgence of his Royal Majesty, for the ease of his Servants, permitting them to officiate by turns, which within a few weeks or months brings them again into their duty and places of attendance ) but constantly every day and night in the year.

And should upon a non est inventus, retorned

of course as aforesaid, when the time or day prefixed in that Writ of Capias is expired, fuster in his Name and under his Seal another Writ of alias Capias to be made to the faid Sheriff, commanding him to arrest or take the said reoman of his Robes, or any other of his Servants in ordinary, whom he knows not to be absent from his fervice or affairs; and upon a like feigned and falle retorn of course upon that Writ, when the time prefixed for to arrest him is expired, cause or command a Writ of pluries Capias to be made or issued out against him; and upon the like feigned and false retorn, made upon the said Writ of pluries Capias, when the time prefixed to arrest him is expired, cause a Writ of Exigent to be iffued out, commanding the Sheriff in five feveral County Court dayes, to call the faid reoman of the Robes, or fuch other his Servant in ordinary, and if he appear, to take him, if not, to retorn him Utlawed; and should likewise at the same time, iffue out at the request of the party Plaintiff, his Writ of Proclamation, directed to the Sheriff of the County where his Family refided, to be proclaimed at two feveral County Court dayes, and a third time at the Parish Church door upon a Sunday, immediately after Divine Service ended, commanding the said reoman of the Robes, or such other his Servant, to appear and render himself to the Sheriff, otherwise to be Utlawed, when he knows he was at that instant of time, and would be at other times prefixed, busie and imployed

in a near attendance upon his Person; or that the re man of his Robes, or such other Servant in ordinary, should be Utlawed upon an intendment or supposition in Law, that after so many iterated contempts of the King, and his Process or Writs, being twelve in number, that is to fay, a contempt upon not appearing upon the Original Writ, three several contempts upon the Capias, Alias, and Pluries, five other contempts in not appearing at the five Husting dayes, if the Action had been laid in London, or five County Court dayes, if the Action were laid in any County, and three feveral contempts in not appearing upon the Proclamation, when he either knew not of the Process, as it very often happens, or if he did take notice of them, refused to appear to the faid Action, because his business about the Kings own person and affairs would not permit him.

And should thereby subject him to all the mischiefs and inconveniences of an Utlawed person, and that sierce Process of Utlary called a Capias Utlegatum, and command a Sheriff to enter into any Liberties, as if he intended such Servants might be taken in his Bed-Chamber, or his Court, which no Law or Custom hath hitherto permitted, or held sitting or reasonable; and seize his Person, Lands and Goods, and Lease and Demise away his Lands to the Plaintiff, untill he shall appear and answer the Action, and the King for the Contempts in not appearing thereunto; when as it was the Kings

(256)

own necessary affairs and business that hindred him, and he was at that instant of time busied in his duty and attendance upon his person; and cannot be restored unto the benefit of the Laws. and the Birth-right of a Subject, untill he shall have reverfed the Utlary by Plea, or Error, or as the usage of the Law was in the time of King Henry the 4th. and long after, that the Utlawed person could not be restored, till he had been by the Court committed to the Prison of the Fleet for his contempts, purchased and pleaded his Charter of Pardon from the King, under the Great Seal of England, and appeared to the Action, when the King and his service and attendance, was the only cause that he did not or could not attend or appear thereunto, or put in Bayl to answer it, when there was no danger of his absence, or flying away from the Kings Service, which is or ought to be not a little advantageous or beneficial unto him.

And when the Plaintiff, at whose instance such a prosecution was made, might with as much ease, and as little charge, and a far less expence of time, have petitioned the Lord Chamberlain of the Kings Houshold, and obtained a license to have taken his course at Law against him: And if the Lord Chamberlain had given the Desendant a reasonable time or prefixion for the Plaintiffs satisfaction, as his Lordship usually doth, it would probably not have exceeded the time of fix months, which is by our Laws the shortest time wherein a Desendant can be Utlawed,

which

which as Bracton faith, ought not to be suddens ly done, but to have five months warning or time given in regard of the severity thereof, when a man is Utlawed and is thereby to forseit bona & catalla, patriam & amicos, his Goods, Chartels, (q) Countrey, and profits of his Lands, to q Bracton be as an exile or banish'd man, was not to be lib.; ca.11. received or entertained by his Friends, could not 125. & bring an Action for any thing due unto him, untill the Utlary be reversed, but was as antient as Corone, lib.; the Saxon times accounted to be a Friendless and ca. 35.

Lawless man.

And it would be a great piece of incivility, to profecute such a Servant of the Kings in ordinary fo bufied and imployed about his person, and not first of all to Petition for his license. when in an ordinary way and with no great charge, and a great deal sooner than the Defendants appearance to his Action can be enforced by an Utlary, it might have been so easily procured; and possibly the Kings great occasions. and expence of money for the Publick and their defence and protection, wherein the good and fasery of that Plaintiff was amongst the rest included, might be the cause that he could not pay fuch Servant in ordinary his wages, and that fuch Servant could not fo foon as he otherwife would have fatisfied the party profecuting, there being no reason to be affigned by any whose exuberant phancies have not altogether divorced them from it, that one that is but imployed upon a feldom and temporary imployment of the Kings,

Kings, and is not his Servant in ordinary, nor the butiness he is imployed in so continually near and relating to his person, should during that his temporary imployment, and of a far less concernment as to go on a Message for him, or in company of some Ambassador, be priviledged during his absence in his Person, Goods and Estate, and a Servant in ordinary continually attending his Sacred Person, should be only protected in his Person, but not in his Estate; or that the priviledges and immunities so antiently due and appropriate to his Servants in ordinary, and near his person, should be curtailed, and have less allowed them than Strangers, and such as are only imployed for fome fmall time or occasion.

Or that the Utlawing of any of his Servants in ordinary, should forfeit their so just Rights and Priviledges, when as by the Law and reafonable Customs of the Kingdom, they are not to be Utlawed, or put in Process of Utlary, without license or leave first asked; and no man should be Utlawed or punished for a default of not appearing, or have any Process of arrest or contempt awarded against him, where he had a reasonable excuse or impediment, or cause of Effoyne, as by Inundation of Waters, being fick. or in the parts beyond the Seas, or fo great a one as the Service of the King; for if Udaries in fuch a case unduly obtained, should cause a forfeiture of just and legal Customs and Priviledges, any that had a mind to do a mischief to a suppo-

fed adverfary, might as well contrary to the Priviledges of Parliament, in the time of Parliamont, find or make a pretence to Utlaw any of the Members of either of the Houses of Parliament, and make that to be as it were a forfeiture of their Priviledges, and a justification (which they can never make out ) of the infringing of them; and the Parliament-men of the House of Commons might be Utlawed persons, which the Law forbids, and by tacite and many times undiscerned Utlaries, might lose and be deprived of their Priviledges.

And the parties offending or endeavouring fuch breaches of Priviledge, thould not take advantage de fon tort, of their own wrongs of tortious doings, which our Common Law maxime doth abhorr, and the Civil Law doth as little like or allow, when its Rule is, that Nemo (t) commodum consequi debet ex suo delicto r Peregrini no man is to take profit by his offence against fanninis de

the Law.

For in vain should the Kings Servants be by the Constitution of Clarendon in the Reign of King Henry the second, freed from Excommunications, or the Ministers or Priests be by the Act of Parliament in the 50th. year of the Reign of King (1) Edward the third, and the first 1 50 E. 3. c. year of the Reign of King Richard the fecond 5. 1 R.2. c. exempted from being arrested in the Church or 15. Church-yard, if an Utlary, which being very antiently used in Criminal matters, but not in Civil in Bractons time in the Reign of King Llz Henry

ali, lib. 2.

# Bracton

ram Rege.

Henry the 3d. taught the way and manner of is in Civil, should be able to forfeit it, or take them away; for in and before that Kings Reign Bracton faith; (t) videtur nulla effe Wrtagaria fi lib. 3. c. 1 2.8. factum pro quo ques Interrogatus est Civile fit de non Criminale, pro quo quis vitam amittere non deberet vel membra, it seemeth there ought to be no Utlary, where the Defendant or party is profecuted for any Civil matter, not Crimmak wherein he was not to lose either life or members.

> And very unbecoming the Majesty and Honour of a Kingir would needs be, to have any of his Servants Utlawed, and purfued with Process of Utlary, whilst they are attending upon him, and made to be as the out-cast and repreach of the people, and not be able to protect them in their int Rights and Liberries of or that any of our Kings Servants should Lupina capita gerere, be as men wearing Wolves heads, which was the antient mark or note of infamy of fuch as were Utlawed in Criminal matters, instead of honourable Liveries, or marks of the Kings Servants in ordinary.

When in the 6th. year of the Reign of King Henry the 4th Roger Oliver the Son of John a Norf. Ter- Oliver, being in objequio Regis in (u) Comitive mino Pascha Johannis Lardner, Cupiranei Castri dei Oyegin par-An. 6 H. 4. tibus Piccardia, pro manitione Caftri pradicti, Ret. 34. co- in the Kings Service in fortifying the Cuttle of Oye in Picardy, under the command of John

Lardner

Lardner Captain of the Castle aforesaid, was Utlawed by Process out of the Court of Common Pleas, at the Suit of John Paxman, in an Action of Debt for Forty pounds, when as die promulgationis Otlagarie, & din antea & postea fuit in obsequio Domini Regis, at the time of his being Utlawed, and long before and after, he was in the Kings Service as aforefaid, and brought his Writ of Error in the Kings Bench to reverfe it, prayed a Writ to the Captain aforesaid, to certifie whether he was then in obsequio Regis, in the Kings Service; per quod mandatum fuit pradicto Capitaneo, whereupon it was commanded to the aforesaid Captain, to certifie quo die & anno, what year and day the faid Roger was imployed as aforesaid, & per quantum tempus ibidem remansit in obsequio Regis in Comitiva sua continue, & quo die & anno recessit, and how long he there ferved without intermission, and what day and year he departed; whereupon he giving Bayl by four Sureties, to appear ad prafatum terminum, & fic de die in diem quousque, orc. at the term or time appointed, and fo from day to day untill he should be discharged. And the Captain certifying the day when the faid Roger came into the Kings Service, and when he departed, the faid Rogen prayed a Writ of Soire faring, to warn or fummon the faid fohn Paxman to appear and hear the Error alledged ; and the Sheriff not having executed the first Scire facility and a fecond being awarded, executed and retorned, and the faid John Paxman not appearing,

the faid Roger affigned for Error, that he was in obsequio Regis, in the Kings Service as aforefaid, and prayed that the Utlary might be reversed for the Error aforesaid; & quod Curia ad examinationem recordi & processus ex officio procedat, and that the Court would as they ought proceed to examine the Record and Process aforefaid; which being confidered and examined, the Court ob Errorem illum, & alies in recordo & processi compertos, for that and other Errors appearing in the Record and Process aforesaid, did reverse and annull the said Utlary.

And in the 9th year of the Reign of the faid King, a man being Utlawed for Felony, (which is of a worfe nature and confequence then in an Action of Debt ) did reverse that Utlary upon a Certificate that he was in the Kings Service at (w) Burdeaux in France, at the time of the Utlary pronounced; and in the fecond year of

Tit. Uthary 10. C 9 H. 4. 3.

w Brooke

& Brooke ibidem 47.

the Reign of King Edward the 4th. a man taken upon a Capias Utlagatum for Felony, pleaded that at the time of the Utlary pronounced, he was in the Kings Service at (x) Calais, under the Governour or Captain thereof, which being certi-# 2 8. 4. 1. fied was allowed; when in all cases of Utlary, the Judges of Courts, and the Kings Serjeants, or Councel at Law, were alwayes not a little watchfull to preferve all the Kings Rights and advantages.

For if upon a command of the King by his Letters Patents, to do any of his commands or affairs. affairs, (which kind of Authority certainly the Kings Servants in ordinary (y) neither need or y Brooke ever demanded) or the party impleaded alleag- Tit. Utlary ing that he ferved at Calais under such a Captain, 79. & 11 shall be sufficient Pleas to avoid Utlaries, the H. 7.5. one (as was adjudged and holden for Law in the 11th. year of the Reign of King Henry the 7th. in the Kings Bench) being to be tryed by the Certificate of the Captain, and the other by the Kings Letters Patents.

And the party Otlawed shall have a Writ of Scire facias, without shewing the Kings Letters Patents, unless the Plaintiff do traverse it, as well as in the other Case he shall be discharged of the Otlary by the Certificate of the Captain; the Certificate certainly in the Case of an Houshold Servant of the Kings, of the Lord Chamberlain, or other Great Officer of the Houshold to whom it appertaineth, may deserve to be as

available.

And yet in all the aforesaid Cases of Protection or Priviledge, they that were abiding within the Realm, might ever since the making of the Statute in the 20th. year of the Reign of King (7) Henry the third, and of the Statute made z 20 H.3. in the 13th. year of the Reign of King Edward ca. 10. 13 the first, and such as departed the Realm by the Kings license, by an Act of Parliament or Statute made in the 7th. year of the Reign of King (a) Riebard the second, make their Attorneys a 7 R. 2. to answer for them in any Actions to be brought ca. 14. against them. And if in case of less consequence,

b3rookeTit.

Velary 75.

Fitzherberts

Abridgement Tit.

Challenge

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c 4 H. S.

quence, or upon a smaller ground of Law or Reason, the Law hath so much favoured a privare person, as to permit him to reverse an Utlary, because he was it a languidus (b) tempere promulgationis Utlagarie, fo fick at the time of the pronouncing or adjudging him to be Utlawed. that he could not propter periculum mortis, appear without danger of death, (when as he might have made or fent his Attorney) as it was adjudged and admitted in the 4th. year of the Reign of King Henry the 5th. the Kings (c) Servants should in matters so very much concerning his Person, and the Weal publick, not be debarred of their plea of a greater impediment, by their necessary attendance upon the person. of their Soveraign.

All which may certainly give us to underfland, and perswade every one that wilfully gives not way to his fancies and misapprehensions, to over-run and trample upon his reason, that the Priviledge of the Kings Servants in ordinary, had its beginning and continuance as well from the necessity of their attendance upon his person and affairs, as from the respect and honour which was and should be alwayes due unto

the King their Master.

And that therefore if the Laws and reasonable Customs of England, do as they have ever done, and by a right interpretation of them are alwayes to be understood, will not permit that the Kings Servants in ordinary may be arrested in any Civil Action, without the leave or license

of the King or the great Officers of his most honourable Houshold, under whose jurisdiction they do officiate first obtained, nor suffer any Member of the House of Commons in Parliament in the time of Parliament, whilft he is in the service of their King and Country to be outlawed, because he cannot be Utlawed without Process of three Capiasses or Writs to arrest & an Exigent & Proclamation first awarded & returned against him & fuch Writs or Process could not be awarded during the against him continuance or adjournment of Parliament.

It may justly, rationally and legally be con-

cluded, that they cannot be Utlawed.

Until there can be an Utlary without a Capias or Process of Arrest & a Capias without leave or licence first obtained of the great Officer of the Kings most henourable Houshold to whom it appertaineth. and an alias and pluries Capias also to arrest, returned with a non est inventus, that such of the Kings Servants being fought to be arrested, is not to be found, and until there can be a contempt where there is none, a consequent without an antecedent. and an effect without a cause.

Howfoever if any of the Kings Servants should at any time be so indirectly and unduly outlawed he may by the favour of their Royal Master be inlawed and restored to the benefit and protection of Him and his Laws, as was some hundred of years ago, held to be Law and right reason by Bracton, who lest it as a Rule to posterity, that Rex poteris utlagatum de gratia un per literas uns Patentes inle- 3. gare & recipere eum ad pacem suam, & reponere eum Mm

(d) BrA-Eton lib. 3. ca. 14. 1.

(e) Fleta

in legem, extra quam prius positus fuit, The King may of his Grace by His Letters Patents pardon the Utlary, and (d) restore him to the benefit of his Laws, but if he were outlawed contra legem terræ debet eam pronunciare efe nullam & utlagati secundum legem terra facilius recipiuntur ad pacem secundum quod ibi fuerit cansa, vera vel nulla. vel minus sufficiens, contrary to the Law of the Land the Utlary ought to be annulled, and the Defendant more easily received into the protection of the King and his Laws, where there was a just cause for to reverse it, or where the cause of the Outlawry appeared to be none or infufficient, with whom concurred Fleta (e) who likewife lib. 1. ca. 28 faid, quod utlagati extra legem pofiti ad legem gratia Principis concomitante restitui possunt & inlagari dum tamen causa utlagaria nulla fuerit vel vimis mature. That men outlawed or bereaved of the benefit of the Laws may by the favour of the Prince be restored, when the cause of the Utlary was none. or it was fooner promulged or adjudged then it ought, and may well be understood to be no otherwife.

(f) Bra-Ston lib. 3. de Corona, CA. 11.

When our very learned Bracton did long agoe rightly define an outlawed person to be qui principi non obediat nec Legi, which obeyed not the King nor the Law, and the cause of an Outlawry (f) to be contumacia & inobedientia, contempt of the King and disobedience unto him and his Laws, fuch Servant of the King which obeveth the King his Soveraign and Royal Maffer in the duty of his place, necessary attendance, and fervice

fervice cannot be adjudged to disobev the King at the same time when he doth more especially obey him : And if not guilty of any disobedience contumacy or contempt to the King cannot be underfrood to be fo unto his Laws or established Courts of Justice, which do act and do justice and punish in his name only and by his authority, for where there cannot be a contumacy or cause of it according to the priviledge of the Kings Servants in the first Process or Summons in Order to the intended Utlary nulla sequi deberet captio & cum(g)captio nulla g Bracton faith (g) Bracton, nec ea que seguntur leum babere Tract. 2. lib. debeant, no Capias or Writ to arrest ought to iffue, and when there is no Capias or Writ to arrest, the Utlary which shall be endeavoured to be the confequence of it is not to be at all quia ubi primum & principale quod est summonitio non subfiftit, for that the principal which was the Summons was not duly awarded.

But if any shall think it to be a contempt of the Kings Process or Courts of Justice although it be mone against the K. himself, such a contra-distinction will prove to be as invalid, illegal and irreligious as that abominable one in the late Times of Confusion of diftinguishing betwixt the person of the King & his Authority, and his natural and politique capacity, which our Laws do declare to be fo united as though most of the Regal Priviledges are adjudged to appertain to the Sacred Persons of our Kings for the Kings Prerogative, as Juffice Brown alledged in the argument of Willon and Berkleys Cafe, en respect de son person & vaont a son person, is in respect Mm 2

5. de Elloniis

dens Coinmentarics in Willon and the Lord Berklyes cafe . 238. b. @ 248. a.

(b) Plow of his Person (b) and do attend it, and howsoever there are some that do only and properly belong to his Politique capacity, yet his natural and politique capacities are neither to be confounded or fo separated, as one to be against or contrary to the other.

is qui testam. l. 1 i ubi canfa Stat. &

novell.

And they which are fo willing to entertain or harbour any fuch opinions may do themselves more right to believe that which a more ferious confideration may inform them, That the Civil Law defining representation doth make it to be no more (i.) Ulpian. then locum (i) alterius obtinere vel tantundem vale-1.1. & 1. Si re to be in the place of another or to avail as much as if he were present, and preses Provincia dicitur in provinciis representare qui in eadem judicis & juris vicem tenet, the President of aProvince is said to represent & is as a substitute of the Judge & the Law and Acts there in the place of them, which to all that are but smally acquainted with those excellent Laws cannot feem to be abf lute, when they may every where find the Fretors or Proconfuls of Provinces, advising (as the younger Pliny sometimes did with Trajan the Emperor) in their Letters to the Emperors upon all emergencies and cases in Law, and directing and steering their Judgments and fentences according to their referipts and anfivers retorned unto them, and our common-Laws of England, where they do fometimes feem to fay that the King is virtually present in his Courts of Justice, do it but as authorative, with a quoad, quatenus and quodam modo, as unto fuch or fuch things' and particulars, in a certain manner, as far as the reach.

reach and compals of the Delegated power committed unto their care and truft will extend, for the King is not in fuch a manner represented by or in his Courts of Justice by his authority granted unto them as to be no where elfe in his natural or perfonal Capacity or Commands, for then he must be Apotheofed or more then mortality or mankind will permit, and fo omnipresent and every where, as to be at one and the same morning, hour and infant of Time in the Terms or Law dayes in the Court of Common-Pleas, Exchequer, Kings-Bench and Chancery, out of the later whereof he could not iffi e out in the same day and moment of Time, his Writs Original and remedial under his Teste meipso, witness our self in the Chancery authorizing the Justices of the Court of Common-Pleas to hold Plea in most of the Actions which they have cognisance of and are impowred to hear or determine, and be at the fame time truly and properly believed to be in the Court of Common-Pleas, nor could cause any of their Records to be transmitted coram nobis, unto himself in his Court of Kings-Bench to correct the Errors committed in some Action by the Judges of the Court of Common-Pleas, nor by a Writ of Pone upon a Certicrari out of the Chancery under his Teste meipso, as fhe were there prefent to direct it to be tryed in the Court of Kings-Bench coram nobis, by a supposition, that it should be there determined before himself, neither did some of our Kings need to have holden Parliaments by their Substitutes or Commission, as King Edward the third M m 3

(470)

third did in his absence to his Son Edward Duke of Cornwal, and at another time unto Lunell Duke of Clarence another of his Sons, if he could by any just or legal intendment, have been supposed to have been there always absolutely, and to all pur-

pofes virtually present.

But if there should be a refusal by any of the Kings Servants in Ordinary, to appear upon any Writs or Process issuing out of any of his Courts of Justice, whilst they are in the Service of the King their Mafter, yet when the King shall have discharged that refusal or contempt (if it should be so called) by a greater and more necessary command in the case of any of his Servants attending upon Him, that contempt is no more to be infifted upon, for if in fuch a case of his mæniall Servants, his command in the necessary attendance upon his person or affairs in one place shall not amount to a Supersedeas or discharge of any suppofed contempt of his Writs and Process and delegated Mandates in another. And his commissionated Courts of Juffice, should adjudge his Servants to be guilty of a contumacy or contempt against his Courts of Justice, in not obeying of his Process, whilft they do attend upon his person in the fafety and well being of Him and all his Subjects, and of the Courts of Justice themselves, they must separate themselves from themselves, and themfelves from the King which intrusted them with that authority, & by too much supposing his authority to be in themselves mistake & fancy that authority in them to be Superiour to him that gave it, creet to themselves

themselves a kind of Superiority over him which gave them that authority, by and under which they do act and are impowred, the bounds and limits whereof they should not go beyond or exceed.

For although there may be a contempt charged upon some one or more of the Kings many Servants, attending in his Court or Pallace, for difobeying or not performing some of his personal commands, and upon the same party much about the same Time for a contempt for not obeying or performing the Precept or Process of his subordinate Judges, by not appearing to some Action profecuted before them, and fo a double contempt or contumacy against the King, yet the contempt to the Kings personal command is and must needs be greater then that which is to his Justices or Courts of Justice, and is more immediate then that which is but mediate, & concerns but some one particular Plaintiff, & not feldom in a malicious or unjust cause of Action, or if just, for some trivial hor headed uncharitable and unneighborly cause of Action, as for Trespass of a Horse or Cow broken into his Pasture. by the default or occasion of his own ill Fence or Hedges when the Beaft knew as little of reason or property, as the Plaintiff did of Religion or the rules of Christianity, when that which is more immediately to the King, may not a little, but greatly concern the well or ill being of the whole Nation. or of multitudes, and in that general and universal concernment of the angry profecutor himfelf, when that which is but mediate, and a leffer contempt to some one of the Kings Courts of Justice in not appearing appearing to some of their Writs or Process made out in the Kings name, and by his authority, con-

cerneth only a few particular persons.

And therefore we should too much thwart those common principles of reason and understanding, to deny the greater command, its power and efficacy before the leffer, and that of the King, before that of his Justices, or to punish and arrest any of the Kings Servants, if they were not fo justly entitiled to the Priviledges aloresaid (for all or the most part of Arrests by order or course of any Courts of Justice in civil Actions before appearance, are grounded either upon contempts or propter suspitionem suga, to prevent running away) for disobeying the leffer authority, and a private and particular concernment, to obey the greater, or the commands of the King in just and lawful things as a Servant in matters relating to his service and in that to the weal publique, or greatest concernment, and may well be excused for failing in the leffer or private, when he is by his Oath usually administred unto the Kings Servants, truly and diligently to attend and wait, and not to depart out of the Kings Court, without licence had or obtained of the Lord Chamberlain, or other the Officers of the Kings most honourable Housbold, unto whom it appertaineth (k) and to obey all and singular commandments given in charge on the behalf of the King, and is not by his Oaths of Allegiance and Supremacy to lessen or abrid eany of the Kings Royal Juri dictions, Preheminences and Priviledges, from and under which are legally derived the aforesaid Rights and Priviledges

k Vide the Oaths of the Kings Serwants in the Raign of Henry there 8th in a Book entituled the Book of Oaths.

meadur

ledges of his Servants, who if they were not priviledged, are not in the contrariety and conflict of superior and inferior commands, to neglect those of the Superior, where he is so bound and ingaged by the duty of a Subject and Servant, and so many obligeing Oaths to obey the Writs or Precepts of an Inserior, to whom they are under no Obligation of Oaths, nor are to be compelled to break those Oaths and Obligations, or to do impossible things when as id possumus quod de June possimus, things unlawful should be ranked amongst the impossibles & our Laws do assure us that Lex non cogit impossibilia, that the Law doth neither ordain nor compelimpossible things to be done or doth punish for the not doing of them.

But if a restless Spirit of opposition to the Kings Rights or Regalities shall not permit an acquiefcence unto that which hath been already faid in defence of that part of it which concerns the Priviledges of his Servants, but that an objection must be picked up to support their factious incivilities, that the King ought not to punish or imprifon any for the breach of his Servants Priviledges, in the causing of any of them to be Arrested or Outlawed without leave or licence first procured when the Writs and Process, tending thereunto are made in his own Name, and under his smal or leffer Seals, as to Writs and Process issuing out of the Courts of Kings-Bench and Common Pleas delegated and entrufted by him unto the two Lord Chief Justices thereof, (1) the answer will | Hill. 14 H.

have no difficulty, if it shal be as it ought to be ac- 6. Ret. 1.

Nn knowledged

knowledged, that those Writs & Process seldome expressing that the Defend. is the K. Servant, are of course made out and Sealed by Officers and Clerks of the Court whence they iffued without the privity or knowledge of the King or his Lord Chancellour or Keeper of the Great Seal of England, or the Judges of the Court of Common-Pleas, and that if those Writs which now and for many yeers past, to the great ease of the people have been made in an ordinary way and course at smal rates and charges as anciently, as the Raign of King John and King Henry the third (m) thould have been made by the privity of the Chancellour, or Chief-Justice, or of the King himself, or granted upon Motion or Petition, and read, and recited in the Kings presence, or in Court by or before the Chancellor or Chief-Justice, when fuch Actions, Writs or Complaints were few and seldome, yet when afterwards they thould appear to be mistaken, too fodainly or erroniously granted, or that the King or the Court have (as in humane affairs it may often happen) been mifinformed or deceived therein fuch Writs or Process, surprize or mistake may be revoked and rectified, and the Writs and proceedings thereupon contradicted by the King or his Authority, as hath been done in the Writs of Supersedent to the Barons of the Exchequer to flay their proceedings in Common-Pleas, or to (n) the Marshallen, of matters wherein they have no Jurisdiction, that known Rule of Law declaring the Kings Letters Patents of the Grant of Lands to a man in Fee or Fee Tayl to be void, where the

m Bracton lib. 5.de Exceptionibus, ca.17. Tract.

> n Register of Writs 185 191.

King.

King is deceived in his Grant, or as King Henry the 3d. Superfeded his Writ de (0) Excommunicato capiendo to Arrest, or take an excommuni- fis, 7 H. 3. eated person, because he was circumvented in the m. 6. granting of the Writ, or made void his Conge d'(p) Effire, to the Priory of Carlifle, & confirmed an election P Rot Vafupon a former Conge or licence, or as is often done by con. 36 37 that common & usual way of Supersedeus(p) made by 3. in Mr. the King upon matters ex post facto, or better infor- Prynnes mation, or by his Justices and Courts of Justice by Annotations Writs of Supersedens quia improvide or Erronice or and amenddatum est nobis intelligi, in regard of milinformation, ments of and Error, or better information, or in the vacating of apon the 4th. Recoveries & Judgments, & discharging Actions, for Edward abuseof the Courts, or ill obteining of them, (q) or Cokes Infitheir Writs & Process,& freeing of prisoners taken tutes 320 of & Arrested by Writs or Process not duly warranted. 321.

And that such an indirect and feigned profecu- q Wasthulls tion of the Kings Servants to the Utlary, defigned cafe in Banonly to abridge the King of his regal Rights, forfeit and annul the Priviledges of his Servants, and Hill, 23 Eobstruct and hinder his service and attendance af- liz. Allenwell deserves a punishment, as that which was sons case 3 usual in our Laws in the Reigns of King Henry the Car. I. Comes 3d. and King Edward the 1. for indirect recoveries, or Judgments obtained by a malitious furprize, fallhood or non-Summons, as the ensuing in An. 1657

Writ will evidence. Rex vic. Salutem pracipimus tibi quod habeas co- rBracton lib.

ram Justitiariis nostris, &c, talem petentem, scilicet 5. 135. ad audiend. Judicium Juum & confiderationem. Curia

nostre de hoc quod ipse per malitiam & manifestam falsitatem Nn 2

38 G 39 H.

Oxon. contra Johannem Harbert falsitatem fecit diffeysiri t ilem de tantaTerra cum pertinentiis, &c. Et unde cum ip eBnullam haberet summonitionem optulit se idem A versus eum itagd.terra capta fuit in manum nostram Jemel & secundo & per quani, defalt idem A terram illam recuperavit desicut illa defalta nulla fuit ut dic. catalla ipfine B in eadem terra tunc inventa & ei occasione prad cta ablata eidem sire dilatione reddi facias & restitui Pracipimus etiam tihi qd. habeas caram &c.ad eundem Terminum A & B per quos summonitio prima facta fuit Gin-Curia nostraTestata & praterea quatuor illos per quorum visum terra illa capta fuit in manum nostram & per quos captio illa testificata fuit in Curia nostra, &c. Getiam illos per quos Secunda Summonitio facta fuit & testata ad certificandum Tustitiarios nostros de pradictis Summonitionibus Captionibus. Et habeas ibi hoc breve Teste &c.

The King to the Sheriff (talis loci) County or place fendeth greeting, We command you, That you have before our Justices, &c. such a Demandant, that is to fay, to hear the Judgement & Order of our Court, in regard that he by malice and manifest fraud caused such a one (the Tenant to be diffeifed of fo much Land with the appurtenances &c. whereupon when the faid E the Tenant or Defendant) had no Summons the faid A (the Plaintiff or Demandant) did fo profecute that Action, that the Land was taken into our hands, a first and second time, by which default the faid Arecovered the Land, whereas there was no default as was alledged, and took the Goods and Chattells of the faid B then found upon the Land, and taken from him by that means. We command you that without delay

you

you cause the same to be rendred and restored unto him, that you also have before our Justices at the fame time A and B, by whom the first Summons was made and certified into our Court, &c. and likewise those by whom the second Summons was made, whereby our faid Justices may of the aforefaid Summons and Captions be certified, and have you there this Writ, Witnesse, &c. Or that which King Richard the Second did in Parliament, in the fifteenth yeer of his Raign, inflict upon Sir (s) VVil- 3 Rot. Par. liam Byan, for procuring a Bull of the Pope to be 15. R. 2. m. directed unto the Archbishops of Canterbury and York, to excommunicate some that had broken his house and carried away his Writings by committing him prisoner to the Tower of London, that fact and doing of his, being by the Lords in Parliament, adjudged to be prejudicial to the King, and in Derogation of his Laws, such and the like artifices and devices, being so much difliked by the Commons in Parliament, in the 39th, yeer of the Raign of King Henry the fixth, as they complained by their Petition to the King & Lords, that (t) Wal- t Peritiones ter Clerke one of their Members, a Burges for the Parl. 39 H. Town of Chippenham in the County of VVilts, had 6. n. 9 been outlawed and put in Prison, and prayed that by the affent of the King and Lords he might be released, and their Member set at Liberty.

Or that which King Henry the eighth did in the Case of Tremynnard. aBurgess of Parliament (u) im- uDier. Pasch. prisoned upon an Utlary after Judgment, in deli- 28 6 29 H. vering him by his Writ of Priviledge, which up- 8. Sett. 18: on an Action afterwards brought against the Exe-

Nn 3

cutors of the Sheriff, and a Demurrer was resolved

by the Judges to be legal.

And therefore Philip late Earl of Pembroke and Montgomery, Lord Chamberlain of his late Majesties Houshold should not be blamed, for causing in the yeer of our Lord one thousand fix hundred thirty and seaven, one Isaac VV alter to be taken into custody, as hath been before mentioned for a contrivance not to trouble him elf to ask leave to arrest Henry Hodsell one of the Kings Servants, by foing him to the Utlary, & endeavouring by that artifice & way of rigor & extremity to do what he pleafed with his Goods & Estate, without arresting his perfon, or infringing of that part of his Priviledg, which being aCorrelate to the King becomes to be his concernment as wel as a concernment of any of his Servants which shal be arrested or imprisoned without leave or licence first, as aforesaid to be demanded, for it is the K. Priviledge, and a part of his Regality &Honour, that his Servants should not be arrested or taken from his Service without a licence first procured: And it was therefore no indigested or unwarranted opinion of Bracton, whenputting the Case where a Laick hath confented to a Tryal before a Judge Ecclefiaftical, or in foro vetito in a Court, where he should not, of matters que pertinent ad (w) Coronam & dignitatem Regiam, which appertained to the KingsCrown and Dignity, he concludeth, That poterit enim quis renuntiare iis que prose introdu-Eta sunt sed tamen non in prejudicium aliorum ficut in prajudicium Regia Dignitatis quia injuste non trabitur ad alienum forum ex quo renuntiando privilegio suo hoc-

m Bracton, lib.5. de Exceptionibus
Traft. 5. ca.
2. & 7. ca.
2. & 16.
Sect. 2.

voluit

voluit injuste tamen propter privilegium Regis, That any man may renounce those things which were granted in his favour, but not to the prejudice of another, because he caunot be said to have been unjustly drawn to appear in another Court or Jurisdiction, when he did waive or forfake his own priviledge, yet he did it unjustly in regard of the Kings Priviledge, Et imponi non potest necessitat Regi quod suam Turisdictionem amittet, and the King is not to be necessitated or imposed upon to loose his Jurisdiction, which will appear to be confonant to the wisdome of many other Nations, the rule of the Civil Law being, that a Priviledge cannot be renounced or disclaimed in prajudicium reservantis sibi Jus in Privilegio, to the prejudice of him that referved a right in that priviledge, vide- x Ex Doar. tur enim inter partes ultro (x) Citroque obligatio con- Barchol. in tracta quo fit ut unus con en u tantum distrahi non po- 1. 1. Super test, for there is such an Obligation or contract de judict. betwixt the parties on both fides, as with the con-convenerit 2. fent only of one of the parties it cannot be dischar- lett. de Tureged fuch deceitful Contrivances to defeat the King dict. cum of his Regalities and Priviledges, and bereave him Jud. I sicus of the attendance of his Servants, by arrefting and imprisoning them, whether he will or no, and if oblig. they cannot do it one way, to compasse and do it by another, upon an impulse only of some over fierce, malitious or uncivil Creditors or Complanants will or haughty humor, to prejudice or abstruct their Soveraigns affairs or fervice, when they knew a more cafe and mannerly way to compafe their pretended rights by petitioning for a leav or licence

Bald. in l. fi de act. o

mean time they were not fatisfied, and do by fo doing, make themselves guilty of a greater contempt and more immediately to the Kings then any pretended contempts of the Kings Servants in not appearing, whilst they are busied in his fervice to the Writs or Process of his Courts of Justice. for which they would arrest or Outlaw them, may very well require the care which King Edward the third did take to secure his Servants from damage by their not appearing to any Process or Summons Writs 19. a. in his Courts of Justice, whilst they were in his Service, by his Writ under his Great-Scal of England, in these words, Rex Justitiariis suis de Banco Salutem. Sciatis quod A fuit in Servitio nostro per praceptum nostrum die Lune in Crastino Quindena Pascha prox praterito. Ita quod eo die interesse non potuit laquela qua est coram vobis per breve nestrum inter B, petentem & pradictum A, tenentem de uno Messuagio cum pertinentiis in N, unde idem A (versus pradictum B inde vocavit ad warrantum, &c. ut dicitur & ideo vobis mandamus quod radictus A, propser absentiam suam ad diem illum non ponatur in defaltam nec aliquo sit perdens, quia idem il um quoad hoc VV arranti amus, &c. The King to h s Justices of the Bench or Common-Pleas, fendeth greeting, Know yee that A was in our fervice by Our Command, upon Munday being the morrow after Quindena Pascha (or fifteen dayes after Easter) last past; So that he could not that day appear in the Action, which was depending before you by Our Writ, betwixt B Demandant against the aforesaid

Register of

foresaid being Tenant of one Messuage, with the appurtenances in N, wherein the faid A vouched C (to warranty against B as is faid, and therefore wecommand you, that no default be entred against the faid A in regard of his absence, that day, and that he receive no damage therein, because we do, as to that, warrant him which feems to be no Novel Writ, or but once or seldome made, when the Rule of the Register, is, that the like Writ may be fent to the Major and Sheriffs of London, the Bishop of Durham within his Liberty of Durham, the Justices of Assise, or to a Sheriff, &e. in these words, Sciatis quod A fuit in servitio nostro per praceptum nostrum die Jovis in Octabis Sancti Hillarii & die Lune in Crastino Animarum proximis preteritis, which may feem to be upon some Kings-Bench Writ or Process, where they do now use to make them retornable upon certain dayes of a retorn of Writs, or if they were upon Writs or Process of the Court of Common-Pleas, where the retorns are commonly not upon a certain day of a week, these dayes appointed, and past, might probably be some Courts or Husting dayes upon an Exigent in order to an Ttlary, or if not out of either of those Courts upon some day of appearance before some Judges of Affise, but out of what Court foever, the Writs or Process were issued, it appears there were fome defaults recorded or entred and were notwithstanding to be superfeded, or not to be to the prejudice of the Kings Servant or fervice: there being like wife subjoyned a Rule in the Regifter qued breve de VVarrantia de servitio Domini

Regis potest fieri pro petente ficut pro tenente & fadum fuit Anno quarto decimo Edwardi Regis Terrii. that fuch a Writ of Warranty by reason of the Kings fervice, may be made aswell for the Demandant as the Tenant, and that the like was done in the fourteenth year of the raign of that King.

So as fuch or the like proceedings against any of the Kings Servants, whereby to bereave them of their just Priviledges, may deserve the Cheque and Comptrol of the Protector of our Liberties, and his care and vigilance to vindicate the just Rights and priviledges of himself and his Servants, which being to be as dear unto him, and of a greater concernment, then the Priviledges of the bRot. Pat. 18 University of Oxford, which were granted and E. 3. Part 2 confirmed by divers of his Royal Progenitors (6)& m. 31. Intus Predeceffors, Kings and Queens of England, may perswade those Invaders of his Royal Rights in the Priviledges of his Servants, to effecm it no feverity or injuffice in our Gracious Soveraign, to fay and refolve as King Edward the third, did in the Case of the Priviledges of the University of Oxford endeavoured to be undermined and subverted, that he would have them to be inviolably observed and

> that he would impugnatores eorundem debite, cobercere, the violators thereof duly restraine and punish, and in another Case concerning Suits or Actions unduly brought in the Courts Ecclefiaftical, declare, as that King did in these words, ad

> ones indebitas, aliqualiter subtrahentur (c) quatenus

jufte poterimus manutenendo subtractaque & occupata

c Rot. Pat. 26 jura nostra ne depereant seu per aliquorum usurpati-E. 3, m. in Dorfo.

si que suerunt ad Statum debitum revocand. nec non ad impugnatores corund. Jurium refrenand, & pro ut convenit juxta corum demerita puniend. co Studiosius nos decet operam adhibere & solicitius extendere manum nostram quo ad hoc Juramenti vinculo teneri dinoscimur & astringi pluresque conspicimus Indies Jura illa pro viribus impugnare, least that our Rights may not be loft or diminished, or by any undue usurpations in any wife substracted, and to the end we may revoke or resume them, and likewife punish the impugners thereof, as it behoveth us according to their demerits, and are the more carefully to use our endeavours therein, to which we are by the Bond of our Oath obliged, in regard we understand those our Rights, to be more and more opposed, notwithstanding that which to those, who will look no further into it, may feem but not prove to be an Objection, that an Exigent being awarded in the Court of Common-Pleas against one R. C. in Easter Term, in the seventh year din veteritiof the Raign of King Henry the 8th. in the County bro Intrat. of Surrey, the faid RC, as it is mentioned in Rastalls tit. Exigent Book of Entries, did the 13th. (d) day of June then 216 Seat. 8. next following, being the first County Court day, appear and deliver to the Sheriff the Kings Protection under the Great Seal of England, wherein hestiled him his Servant, and one of the Grooms of his outward Chamber, took him and his Estate into his Salva guardia, safeguard & protection for one year next ensuing the 16th day of September then last past, and prohibited the outlawing or molesting of him, whereupon the Sheriff forbearing to pro-00 2 ceed

ceed; and at the retorn of the Exigent, which was A die Sancti Michaelis in unum mensem. a moneth after Michaelmas, retorning and reciting the Tenor of the Protection, and concluding, Ideo ad ulterius Executionem cjusdem brevis de Exizi fac nihil A-Etum est, that therefore nothing more was done in the execution of the Writ of Exigent the Court, Quia pradicius Vicecomes executionem dicti brevis de Exigend. non fecit sed de executione ejusdem pretextu brevis alterius supersederit prout per retornum ejusdem vicecomitis constat, in regard that the Sheriff did by colour or pretext of the faid other Writ (the Kings Protection) superfede the said Writ of Exigent, as appeared by the retorn of the faid Sheriff, amerced the Sheriff in forty (hillings, and ordered that a new Exigent (the retorn of the former being expired) should be awarded against him retornable, (e) A die Fascha in unum mensem, a moneth after Easter, for upon view of the Record, it appeareth, that the date of the Kings Protection was the fixth day of February in the fixth year of the Reign of that King, and to endure for a year from the 16th. day of September next before the date thereof, and that the faid R. C. being in the Exigent, whereunto he appeared, and the Writs of Capias alias and Fluries leading thereunto, named Richard Camden of the Town of Westminster in the County of Midlesex, Fishmonger, otherwise called Richard Camden of the Town of Westminster Fishmonger, the Action being an Action of Debt for 61. 17s. 4d. at the Suit of VVilliam Hack, Alderman, and Draper

e Pascha, 711.

of London, the King also mentioning him immediately after the Title of his Servant, and one of the Grooms of his Chamber, to be otherwise called Richard Camden late of London Fishmonger: It is very probable, that he had been only fworn one of the Grooms of the Kings Chamber Extraordinary, and evident enough. That the Sheriff was justly amerced for taking upon him to superfede the faid Exizent, as if he had been a Judge, when he was but a ministerial Officer, and was to have attended the Judges allowance or difallowance thereof, who might well afterwards award an Exigent de novo to be made against him, when the Protection was expired, and if it had not been expired were not to take notice of it from the Sheriff, but from the Writ of Protection it felf, when it should have been brought and delivered unto them; as it was adjudged in the 38th year of the Reign of King Henry the 6th where (f) a Sheriff was fined for deli- f 38H.6.23. vering a prisoner out of his Custody by the Kings Rolls Reports Writ of Protection which should first have been tit. Protectibrought to the Judges, and allowed by them.

And might besides have been well disallowed, by the Sages of the Law in the faid 7th year of the Reign of King Henry the 8th for variance betwixt the Addition of the Defendant, in the Exigent and Writ of Protection, as the like had been (g) done in Et Rolls Rethe 19th year of the Reign of King Henry the 6th. ports tit. Pro-

And if he had been the Kings Servant in Ordi- tection. nary might have been as legally granted unto him, h Br.tit. Prito revoke & supersede an Utlary unduly (b) profe- viledge 10E.4 cuted, as the Judges of the Court of Kings-Bench, 4.

g 19H.6.48.

(286)

Br. tit. Utla or Common-Pleas, have reversed or stayed Utlary 4 H. 4. 6 ries by reason of the Desendants imprisonment, 4 H. 5.75 6 sickness or malady, hindering an appearance to 77.1 H.7.68 Br. 5 E. 4. tit. an Exigent, or as the Judges of the Court of offic. del. Court Kings-Bench, in the 5th year of the Reign of King Edward the 4th did resolve, that they them-

offic.del.Court Kings-Bench, in the 5th year of the Reign of King Edward the 4th did resolve, that they themselves might ex officio by Office of Court do it, in case wherein an Indicament was insufficient or an Exigent was awarded, where it ought not, or as it 10 E4.4. the Judges did in the 10th (i) year of the Reign of

Brook tit. priviledg.40.

that King, in allowing upon a Traverse and Issue joyned upon an Exigent in an Action of Trespas, the priviledge of a Filacers Horsekeeper, travailing with his Master to London, and bringing back his Horses, or as the Judges of the Court of Common Pleas in the 5th year of the Reign of King

kIn veteri libro intras tit. Error & Trin. 5 H. 8. rot. 3.

Horses, or as the Judges of the Court of Common-Pleas, in the 5th year of the Reign of King Henry the 8th, (k) did by his authority supersede an Exigent by a Protection allowed, by reason of serivce in War or as the Court of Chancery did in the 8th year of the Reign of Queen Elizabeth, by her Writ, Superfede & stay 2 Writslof Exigent in the Court of Common-Pleas at the Suit of two several persons against Robert Webb, one of the Cursitors of the Court of Chancery by reason of his Office & Attendance in that Court, which Writ of Priviledge and Superfedeas was allowed by the Judges of that Court, and an entry made upon the Roll, where the Plea of his Priviledge was entred in these words, Ideo consideratum est quod pradictus Robertus libertatibus Oprivilegis pradictis gandeat. Ac separalia brevia pradicta ei conceduntur, therefore it is (1) ordered, that

the faid Robert VVebbe shall enjoy his Liberties and

l Innovo libro Intras tit. Error.

Priviledges

(2877)

Priviledges, and that feveral Writs, as a forefaid be granted unto him, probably Writs of Superfedeas to the Sheriffs of London, unto whom the Writs of Exigent had been before fent and directed; or as the Court of Chancery hath done, in the ninth year of the Reign of King James, (m) in the m Moyles en-Case of Valentine Saunders Esquire, one of the Six Clarkes of that Court, require by the Kings Writs the Justices of the Court of Common-Pleas, to furcease the prosecution of the said Valentine Saunders to the Utlary; or might aswell defend their Regal Rights in the case of their Servants in Ordinary by a Writ de Rege inconsulto, (n) commanding, as in some other cases of their concernments, not t) proceed against them, until their pleasure be further fighified, or affert and command the Liberties & Priviledges of their Servants, (o) by Writs de o Ibid. 262. libertate allocanda, aswell as for Liberties to be allowed unto Citizens or Burgers, which contrary to their Liberties were impleaded.

But too many of the Kings Servants Creditors (for all are not fo uncivil) who would be glad to find a way, or fome colour, or pretence of Law rudely to treat the Rights of the King and his Servants, would willingly underprop that their humour and defign with an objection, that our Kings have conveyed their Justice unto their established Courts of Justice at Westminster, and are not to contradict alter or suspend any thing, which

they do in his name therein.

And that if any of the Kings Servants in Ordinary, be arrested without leave, the King or the

tries 83. Mich. 9 Jac. Regis rot. 705.

n Register of Writs, 220.

great

(288)

great Officers of his Houshold, may not punish those that do offend therein, and that being so Arrested they are so in the Custody of the Law as they ought not to be released, until they do appear or give Bayl to appear and answer the Action.

CHAP. VII.

## CAP. VI.

That the Kings established and delegated Courts of Justice, to administer Justice to his People, are not to be any bar or hinderance to his Servants in Ordinary, in their aforesaid antient, just and legal Priviledges and Rights, or that the Meffengers of his Majesties Chamber, may not be fent to summon or detein in custody the Offenders therein, or that any of his servants being arrested without licence, are so in the custody of the Law. as they cannot before apparance or bayl to the Action be delivered.

7 Hich will not at all advantage their hopes or purposes, if they shall besides, what hath been already proved aswell, as alledged, give Admittance unto a more weighed confideration, that p Bart. I. cum delegatio ad causas non intelligitur ad futuras, a Com- furiosus F. de mission or Authority entrusted for some special, or Jud. determinate matters, is not to be understood to extend unto all that in the administration of Justice may afterwards happen, that in the Court of Exchequer, the Barons are and fhould be the special Ministers, and Supervisors of the Kings Revenue, subject to his Legal Mandates and disposing power, that the Court of Common-Pleas, being a Court erected, and continued by our Kings for the dispatch of Justice, and ease of their Subjects and People in Common-Pleas or Actions, wherein the King his Crown and Dignity are not immediately

diately concerned, do only hold Pleas and have Jurisdiction and Cognisance, ratione Mandati by reason of the Kings Original Writs, Command or Commission, issuing almost in every Action from himself out of his HighCourt of Chancery, that the Justices of the Kings-Bench, are, ad placita coram Rege tenenda affignati, affigned as coadjutors to the King, to hear & determine Pleas supposed by Law to be heard before himself in that Court, and by the ancient stile & title of their Records, faid to be, de confilio Regis, of the Kings Councel, & that in the High Court of Chancery, the King, by the Lord Chancellor, or Lord Keeper of the Great Seal of England, as his Substitute or Deputy, as some of our Judges. in the 9th year of the Reign of King James, have believed them to be in that supereminent and superintendant Court of and over all his other Courts of Justice, commands his Sheriffs (who are fworn to execute his Writs, and not to prejudice his Rights) to execute their Writs directed unto them in his Name and under his Seal; doth provide and give remedies in all emergencies of Law and Juffice, where the Supreme and Legal Authority, is implored or prayed in ayd or affistance. And that where a Delegated Power or Jurisdiction is granted by the King (as not only the Lawes of many other Nations, but our Bracton. and Fleta, men not meanly learned in the antient Laws and Customes of England, as well as in the civil Laws have adjudged) he doth not exuere fede potestate, so grant away that Jurisdiction as to exclude himself from all power, and not be able. upon.

I Coke 9.relat. Sir GeorgeReynells Case. Vide Book of Oathes.

upon just and legal Occasions to resume it, or intermeddle in some part thereof, when a Lord of a Mannor, though he hath by a Patent or Commission granted to his Steward for life, the power or jurisdictions of keeping his Courts, assessing of Fines and the like matters appurtenant thereunto is not debarr'd, when a just occasion shal either necessitate or invite him thereunto from his personal affelling of Fines, or other Acts belonging unto the Court, or that power & authority, which he should have over his Tenants, & that where the Liberty of a Court Baron appurtenant to the Grant of a Mannor with the jurisdiction of Sake or Soke, holding of Pleas, and punishment of Offenders is granted by the King, or allowed to any man and his heirs by Custome or Prescription, the King is not debarred upon any grievance or complaint of any Tenant of the Manor, to command Justice to be done unto him, by his Writs of Right, Close or Patent, and where a Leet being a more large or greater Jurisdiction hath been granted to a man and his heirs to feize and grant it to another for not rightly observing the order of Law therein, as for not creeting a Pillory, making of a Clerk of the Market, and the like or altogether disusing of it, and where liberties of retorna Brevum, executing &returning Writs in a certain Precinct or Liberty, have been granted to a man & hisHeirs, common practice and course of Law & its Process may inform us, that the King hath notwithstanding fuch a power& superintendency of Justice inherent in him, over all the Courts of Justice, high or Pp 2 tow

low in the Kingdome, as upon the Sheriffs retorn quod mandavit Ballivo libertatis, that he made his Warrant to the Bayliff of fuch a Liberty to arrest such a Desendant, and that the Bayliff nullam sibi dedit reffonfionem, had made him no retorn nor answer, he may thereupon by his Itflices, cause a Writ to be made to the Sheriff, commanding him, quod non omittat propter aliquam tibertatem Ballivi libertatis, &c. quin capiat, that he do not omit to enter into the faid Bayliffs liberty, and arrest the Defendant, and may also when a Defendant is ontlawed cause at the instance of the Plaintiff, a Capias Vilegat. Writ to be made to take & arrest the utlawed person, with a non omittas propter aliquam libertatem, power and authority to enter into any Liberty under the name of his Attorney General as an Officer intrusted with the making of the faid Writs of Capias Utlegatum, and that Offices either granted by the King for term of Life, or in Fee or Fee-Tayle are forfeitable by a Misuser or non user, by not executing that part of the Kings Justice committed to the care and trust of the Officers thereof.

r Mich. 34 E. I. incipien-frot. 143 coram Rege & Consilio videlicet in Banco Regis.

And so necessary was the Kings Supreme Authority heretosore esteemed to be in the execution and administration of Justice as in the Case between the Prior of Durham and the Bishop of Durham, in the 34th year of the Reign of King Edward the first, where amongst other things an information was brought in the Kings-Bench, against the Bishop, for that he had imprisoned the Kings Officers or Messengers; for bringing Writs into his Liberty

Liberty, to the prejudice as he thought thereof, and that the Bilhop had faid that nullam deliberationem de eisdem faceret, sed dixit quod ceteros per ipsos castigaret ne de cetero literas Domini Regis infra Episcopatum suum portarent in Lestonem Episc:patus ejuldem, he would not release them but would chastise them or any other, which hereaster should bring any, of the Kings Letters (or Writs within his Bilhoprick, to the prejudice of the Liberties thereof. And in the entring up and giving the Judgment upon that Information and Plea, faith the Record, Quia idem Episcopus cum libertatem pradictam a Corona excuntem & Dependentem habeat per factum Regis in hoc minister Domini Regis est ad ea que ad Regale pertinent infra eandem libertatem loco ipfine Regis modo debito confervanda &exequenda. Ita quod omnibus & fingulis ibidem juftitiam exhibere, & ipfi Regi ut Domino suo & mandatis parere debeat prout tenetur licet proficua & expletia inde provenientia ad usum proprium per factum pradictum percipiatur, in regard that when the Bishop had the liberty aforesaid by the Kings Grant or Charter from the Crown and depending thereupon, he is in that as a Servant or Minister of the Kings, concerning that things which do belong unto the Kings Regality, within the Liberty aforesaid, to execute and preserve it in a due manner for, and on the behalf of the King; fo as there he is bound to do Justice to all men, and to obey the King and his Commands, as his Lord and Soveraign, although he do by the Kings Grant or Charter Pp 3

Charter, take and receive the profit arising and

coming thereby.

Wherein the Judges and Sages of the Law, as in those Ancient Times they did not unfrequently in matters of great concernment, have given us the reason of their Judgment in these words. Cum potestas Regia per totum Regnum tam infra libertates pradictas quam extra se extendant videtur Curia, & toti Confilio Domini Regis quod hujusmodi imprisonamenta facta de hiis qui capti fuerunt occasione quod brevia Domini Regis infra libertatem pradictam tulerint simul cum advocatione & acceptatione facti. Et etiam dictis que idem Episcopus dixit de Castigatione illorum qui brevia Regis extunc infra libertatem suam port went manifeste perpetrata fuerunt, when as the power and authority of the King, doth extend it felf through all the Kingdome, as well within Liberties as without it feemed to the Court and all the Kings Counsel, that such imprisonments made of those which brought the Kings Writs within the Liberty aforesaid, the Bishops justifying and avowing of the Fact and the Words which the Bishop said. That he would punish all fuch as should bring any Writs to be executed in his Liberty, were plainly proved, Et propterea ad inobedientiam & exhareditationem Corona & ad diminutionem Dominii & potestatis Regalis, Idea consideratum est quod idem Episcopus libertatem pradictam cujus occasione temerariam sibi assumpsit audacim predicta gravamina injurias & excessus pradictos perpetrandi & dicendi toto tempore suo amittat Cum in co quo quis deliquit sit de Jure puniendus.

Et eadem libertas Capiatur in manus Domini Regis Et Nih: lominus corpus pradicti Episcopi capiatur. Wherefore, because it tended to disobedience and a disherison of the Crown and diminution of the Kings Power and Authority, It was adjudged, that the Bishop for his rash presumption and boldness, and for committing the aforesaid wrongs and injuries, should forfeit his Liberty aforesaid, for that every man is to be punished according to the nature of his offence: And it was ordered. That the Liberty should be seized and taken into the Kings hands, and that the Body of the Bishop notwith-

standing should be taken into Custody.

For the Kings Justice, to which his Coronation Oath is annexed, is inseparable from his Person, & fo fixed to his Diadem and Regal Authority, as it is not to be absolutely or any more then conditionally deputed and intrusted to any other, or otherwife then with a referve of the last Appeal, and his Superiority, and therefore King Edward the first, in some of his Writs, Commissions or Precepts, faith, that he (but not his Judges) was-Dehitor Justitia, so a Debtorto Justice, as not to de- I Register of ny it to any of his People complaining of the want Writs 7, 15, of it, and ad nos pertinet, the care thereof belongeth 23, 34 b. & to the King, and to that end appointed his high 36. b. 37 6 Court of Chancery, and his Chancellor, or Lord Keeper of the Great Seal of England, and required all the Officers & Clerks of that Court to take care that pro defectu Justitia nullus recedat a Cancella- t 13 E.I. ea; ria fine Remedio, no man for want of Justice do 24. go away from the Chancery destitute of remedy;

from:

from whence also lyes an Appeal to the King himfelf in Parliament : and in the Case of Sir william Thorpe Chief Justice of England, in the 24th year of the Reign of King Edward the third, being put out of his place for Bribery and Extortion, it was in the Sentence or Judgment given against him, faid that Sacramentum Domini Regis quod erga Populum habuit custodiendum fregit maliciose, false & Rebelliter quantum, in ipso fuit, he had fally, malitiously and traiterously, as much as in him lay broke or violated the Kings Coronation Oath, which demonstrates, that although he had at the fame time violated his own Oath made unto the King, when he was admitted into his Office or Place, yet his fault was the greater in breaking the Kings Oath, and that part of his Justice with which he was trusted.

For the Grants of the Judges Places by the King durante bene placito, or quamdia se bene gesserint, during the Kings pleasure, or as long as they do well behave themselves, the Kings Commissions of Oyer & Terminer. Et Gaola deliberanda, of Gaol Delivery, and to hear and determine Causes in their Circuits, their Oathes, (besides their Oathes of Allegiance and Supremacy, taken at their admittance into their Places) prescribed and directed in the 18th year of the reign of King Edmard the third, and administred by the Lord Chancellor, or Lord Keepers of the Great Seal of England, for the time being, That they the King and his People in the Office of Justice, shall not counselver assent to any thing that may turn unto his damage, shall take no Fee or Robes

u Coke 3
parte Institutes 223 &
ro. Pat. 24
E. 3. part. 3.
m. 24. in
Dorso.

2 18 E. y. 20 E.3 ca.

of any but the King himfelf, nor execute any Letters from him contrary to the Law, but certifie him and his Councel thereof, and fal procure the profit of the King and his frown in all things, that they may reafonably do the fame, & in an Act of Parliament, made in the 20th year of the Reign of that King, they are expresly mentioned to be, Deputed by the King y 20 E. ca. I. to do Law and Right according to the usage of the Realm, the Kings Writs directed unto them, Riling them no otherwise then Justitiariis suis, and those Courts the Kings Courts, the acknowledgment of the Judges themselves, in the Reign of Queen E- z Andersons lizabeth, and their readiness to obey all her law- Reports feet. ful commands, in the Case of Cavendifb, and that 201. in Caof Sir Edward Coke, that the Judges are of the vendilhes Kings Councel for proceedings in course of Justice case, Cokes their affifting the Lord Chancellor, or Lord Keep- 3 parte Infti-er of the Great Seal of England, upon request or tit. Premusending for some of them out of their own Courts nire. into the Chancery, their attending upon the King a 30 4Elit. in his House of Peers in Parliament, to affift and 22. advise in matters of Law there debated, when re: b Dier Mich. quired, but not with any power of Vote or doci- 34 Eliz.25 five Judgment, their often meetings out of their Reports of Courts& altogether, upon any (b) of the Kings com- Cafes refermands, or references in causes difficult by Petition red to all the or Appeal to the King, and their Opinions hum- Judges bly certified thereupon, and attending upon the Ayres contoa King and his Councel upon matters doubtful, Allanfon in wherein the ayde and advice of the Regal Autho 3 Car. 1. 6 rity was required, and whether their Patonts or legum An-Commissions be durante bene placito, or quam din thores.

ubig: inter

Je bene gefferint, during the Kings pleasure, or as long as they shall well behave themselves, are void, per demise le Roy, by the death of the King that granted their Patents or Commissions, and to be renewed at the pleafure of his Successor, may abundantly evidence that they may not claim or justly be beleived to be independent Soveraign, absolute or without an Appeal to their King and Soveraign who granteth amongst many other Offices in the faid Courts, the Office and Place of warden of the Fleet by the Name of the Keeper of the Kings Pallace at Westminster, and the Office thereby to attend by him or his Deputy, the Courts of Chancery, Common-Pleas and Exchequer, and keep in fafe Custody the Prisoners committed by them, when all the Writs and Process of those Courts, are iffued under his Name and Seal, and all but the Chancery, (which are honoured by his own Teste) are under the feveral Teffes or Subscriptions, as the Law intendeth of the Chief Juffices or Judges thereof together with the Exemplifications of Fines, Recoveries, Verdicts and other Records in the Court of Common-Pleas, and the Court of Kings-Bench, and in their feveral and diflind Jurisdictions, are subjected unto and dependant upon the Regal Authority, Crown and Dignity.

And caunot be otherwise understood to be, when our Kings have sometimes fined Judges for Extertion or Bribery as King Edward the first, did

Sir

(299)

Sir Ralph de Hengham, and diverse other Judges in Samuel the 16th year of his Reign, & when (b) the Judges Daniel Hiin the faid Courts, cannot ex officio, pardon or dif- flory of Engcharge, a fine or punishment imposed or inflicted land. by them upon Offenders, nor without his Writ of Error, amend or correct Errors, committed by themfelves after the Torm ended, wherein they were committed, & are if they exceed their bounds lubject by his Writ & punishment of Pramunire to a forfeiture of all their Lands, Goods & Estate, & of their Lands in Fee-Simple or for Life, & to have their Bodies imprisoned at the will of the King & to be out of his Protection, and when he as he pleafeth commandeth the Rolls and Records of the Courts of Chancery, Kings-Bench and Common-Pleas to be brought into his Treasury, or the Tower of London for fafety, adjourneth those Courts, upon occasion of Peftilence or other reason of States or Warrens King Edward the first, did to rork, where they continued for fome years after, &that the Judges are by Office of Court to flay & furcease in many things, e Brook tir. where they do perceive the King to be concerned Office del. either in point of profit or other(e)concernment, un. Court 25 H. till they have advised with the Kings Sericants, or 25, 28. Councel learned in the Law: : when the Writs of Prohibition frequently granted by the Court of Common-Pleas or Kings-Bench in his name, do fignifie, that he hath haute Justice, power and authority over those, and the inferior Courts of Justice, and by his Supreme Authority, doth by his Legal Rescripts and Mandates iffuing out of his High Court of Chancery 292 upon

upon any defects in his Subordinate Courts, for want of power and authority confonant or agreeable to the rules of right reason and equity, moderate the rigors of his Laws, correct Errors, and provide fitting remedies for all manner of Contingencies or Diforders, happening in the course execution or manage of his Laws or Juffice, testified by his Injunctions out of the Chancery, to stay the rigors and proceedings in the Courts of Common-Law, Commissions of Trail Baston more rightly ottroy le Baston, granted by King Edward the first, to inquire of and punish missemeanours, riots extortions, de which the Courts of Justice, then in being, had cognisance of, 80 might have upon complaint punished & redreffeel & many other Commissions of that kind made out by that &other of our Kings, with Commissions of Affife & Affectation com multis alis, of the like, the Write of Roge exconfulto not to proceed in mattors concerning his own particular, without his being first consulted de Attornate (d) languide recipiend Register of Writi 8 220 do, to admit an Attorney for one that is fick, Writs Ibident 170 of withinty against Jurors fally swearing in their Verdices Write de Affiguetarinanda, to continate the proceedings upon an Affile, Judita querela, to relieve one that is oppressed by some tudement, Statute or Recognifance, (e) Writs de Certio-

b. 229 b. e Register of Writs 169 170. f Ibidem 4.

172. .3: Register of

Writs 217

g Register of the Poot of a Fine, mittendo tenorem (e) Afficin E-Writs 221 b. winemains, to fend the Tener of a Writ of Affife

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ranis da tenore Indictamentinto be certified of the

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Utlary of the remove pedt Fine, of the Tenor of

into the Chancery to be from thence transmitted by a Copy for Evidence into the Court of Exchequer, Writs quod Justitiarii procedant ad captionem Asse, impowring the Justices of Assise to procede in the taking of an Affile and his Commissions frequently granted in some special cases, as Dedimus potestatem, impowring the Judges or others to take the acknowledgements of Fines, with many other kinds of Commissions, a pose Comitatus ad vim Laicam amovendam, to remove a force, where a Parson or Minister is to be inducted into a Church or Benefice, & Commissions granted ob lites dirimendas, to compose contentious suites of Law. where the poverty of one of the parties is not able to endure them; and the granting of a priviledge by some of our antient Kings to the Bishop and Citizens of new Sarum or Salisbury, that the Iudges of Assize or Itinerants should in their circuits hold the Pleas of the Crown at that Town bo E. I place or City which King Edward the first did (b)by his de Jur. o Writ or Mandatos allow or cause to be observed : Assiste coand many more which might be here inffanced, ram Solamowhich with the Laws and practice thereof, and ne de Roff. o the reasonable customes of England do every where Justic. Itineand abundantly evidence, that the King doth not rant rot: 15 intrust his Courts of Justices or the Judges thereof with all his Regal power, and all that with which he is himself invested in his politique capacity, or hath so totally conveyed is unto them, as to make (i) them i Risishereby the only dispensers of his justice; but that Her of Wries the appeal or dernier refort from all his Courts of 59. lutice, is and refides in the King, being the ulti-

mate :

(302)

(k) Cromptons Jurifdiction of Courts. 12 Dyer 315.

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l Elfings modus tenendi Parlamen-

mate supreme Magistrate, as from the inferiour Courts of luftice in the Counties or Cities, to the Superiour Courts of Iuftice at westminster-hall. from the Court of Common-Pleas by Writ of Error to the Court ( k) called the Kings-Bench , from that Court to the Parliament: And as to fome matters of Law fit to be tryed by action at Law, from the Chancery unto the Kings-Bench or Courts of Common-Pleas, or Exchequer, referving the equity when what was done there shall be returned and certified, and even from the Parliament it felf, when Petitions there nepending could not, in regard of their important affairs, be dispatched to the high Court of Chancery, (1) and that appeals are made to the King in his high Court of Chancery from the Admiralty Court. when as the process and proceedings are in the Name and under the Scal of the Lord Admiral, and from the Prerogative Court of the Archbilhop of Canterbury for proving of Wills, and granting of Administration when the Process and proceedings are not in the Kings name, but in the name and under the Seal of that Arch-bishop.

So as the Gentlemen of the long Robe, who in the Reign of King Charles the Martyr argued against the Kings Prerogative for the just liberties of the people of England, in the case of the Habeas Corpora's, when they affirmed the meaning of the Statute made in the third year of the Reign of King (1) Edward the first, where there was an Exception of such not to be Baylable as were committed by the command of the King, or of his Iusti-

m 3 E. 1 cap. 15.

Juffices, tobe, that the Kings command was to be understood of his commands by his Writs or Courts of justice, might have remembred, that in former times his Authority by word of mouth, or in things done in his presence ( in matters just and legal, not contradicting the established rules, cuftomes and courses of his Courts of Justice, and the power and authority wherewith our Kings have intrufted them ) was accompted to be as valid, if not more than any thing done in his Courts of Juffice, witness that notable record and pleading aforesaid betwixt the Prior and Bishop of Durham in the 34th year of the Reign of that, by his own and his Fathers troubles, largely experienced King Edward the first (which was not long after the making of that Statute, concerning such as were to be bayled or not to be bayled) where it was faid, and not denyed to be Law, quod Ordinatio, (meaning an award or fomething acknowledged in the presence of the King) in m Mich. 33 prasentia Regis facta & per ipsum (n) Regem affirmata & 34E.1.rot. majorem vini habere debet quam finis in Curia sua co- 103. in Banram justitiariis suis levatus, that any Ordinance or co Regis. acknowledgment made in the Kings presence, and by him affirmed, was to be more credited, and to have a greater force then a Fine levied before his Justices in his Courts of Justice, which may be a good Foundation and Warrant, for feveral agreements and Covenants made betwixt private persons, and ratified by the King under his Great Seal of England by inspeximus and confirmations by his allowance and being witness thereunto-as

that of Rorger Mortimer Lord of Wiemore, with Robert de Vere Earl of Oxford, for the Honor and Earldome of Oxford, and the great Estate and Revenue belonging thereunto, forfeited by the faid Earl in taking part with the Barons against King Henry the third, and many others which might be instanced, and are plentifully to be found in many Agreements and Covenants made betwixt Abbots and Priors and their Covents, and divers of the English Nobility and great men mentioned in Mafter Dugdales first and fecond Tomes or Parts of his Monafticon Anglicanum. (e) For it was resolved in Bafter Term in the fourth year of the raign of Queen Elizabeth, by the then Lord Chief Justice of the Court of Common-Pleas, the Lord Chief Baron and Whiddon Browne and Corbet Juflices Carus, the Queens Serjeant, and Gerrard her Attorney General, upon a question put unto them, by the Lord Keeper of the Great Seal of England, that in case of Piracy or other the like p Dier 4Eliz. crimes, the Queen might in the intervals or vacancy of aLordKeeper of the (p) Great Seal of England, by a necessity of doing Justice without a Commission granted unto others to do it, punish fuch offenders, although the Statute made in the 28th year of the raign of (q)King Henry the 8th Ca. 1 5th doth direct Piracy to be tryed by Commissir Sir Isaack on. And it was allowed to be Law, in a Case put Wake in his by Ring Tames (r) that where an Affrey or Alfault was made by any in the Kings presence, the King himself might commit or command the party offending to prison, which may furely upon some

o Dugdales I & 2 parte Monasticon Anglicanum

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33.

15. Rex Platonicus.

emergent

emergent or particular occasious admit him tog iust intermedling therein, for it cannot be denied, , Gregorius but King Henry the 3d. hath fometimes fate a- Tholog. mongst his Judges or Barons in the Court of Ex- Syntagm, chequer, and we may believe those dictates of Turis lib. 47. reason which are to be found in the Civil Law ca 21 fec. 23 when it faith that, Tus Superioritatis jurisdictionis Regis, non potest ab inserioribus dominis jurisdictio- Cum non nem habentes contra Principem, prascribi quia qua ex Officii de funt in subjectionis data imprascriptibilia. The prascript right of Superiority of Jurisdiction cannot by comperit de any inferior Jurisdictions be prescribed against the prascript. Prince, for that those things which were granted 30. vel 40. or given in figne of subjection are imprascriptible. Anno. Poffet onim fi hoc fieret paulatim, collabi Imperium or redderentur subditi Acephali, for if that should be suffered, the Dominion or Empire of Kings and Princes, would by little and little fo moulder and wast away, as the Subjects would be more then Subjects and as men without a head. Et cum , Bal. in anomnes jurisdictiones habeant vim a Regia permissione the actiotanquam radij a Sole fieri non potest ut remanente ju- nes de sacr. risdictione non agnoscatur Sol unde dependet. And Eccles. & in when all Jurisdictions doe receive their force and prosm. fec. vigour from the Kings permission, as the Beams fac. null raor Rayes doe their Lustre from the Sun; it cannot distinct. be but that as long as the Jurisdiction remaineth. the Sun on which it dependeth should be acknowledged. Quomodo etiam poterit quis dicere pravalere jurisdictriones concessas a principe, contra authoritatem principis cum bac potestas annexa Regio diademati est d'innata ei videtur ; For how can a-

t Greg. Tholofanus Syntagin. Juris lib. 47. ca. 21.

traitte des

Seigneuries

a Cod.lib.8. Tit. 14.

ca. 3. 58.

any one affirme that any Jurisdiction granted by the Prince can be used or prevaile against his authority, when he may at his pleasure for just and legall Causes alter, diminish, or revoke them; it being a power innate and annexed to his Royal Di-Saith that Civilis prudentia, those excellent rules of government which are ro be found in the Cefarean or Civill Law. And there can be no power faith a late learned Author where there is not a power to exercise it, for in France saith the learned Charles, Loyfeau le dernier reffort de Justice, est tellement un droiet de Soverainete que mesme en Commun language est appelle Soverainete, the last refort or appeal for Justice is so much esteemed to be a right of Soveraignty, as in common or vulgar fpeech it is called Soveraignty. And where the King is by our Lawes not denied to be the Lex viva & Lex loquens, the living and speaking Law, the Civill Law faith, Rex solus judicat de causa a jure non diffinita, the King is the only Judge in fuch Causes where the Law hath not already defined or determined them : And Bracton hath these words, in dubiis & obscuris, vel si aliqua dictio duos contineat intellectus Domini Regis erit expectanda Interpretatio & voluntas cum eius sit Interpretare cujus est condere, in matters doubtfull and obscure, or if any word shall contein or feem to beare a double fignification, the Kings will and Interpretation is to be attended when as he that makes a Law is and ought to be the fittest Interpreter, and Britton faith, that the Kings Jurisdiction is superior to all the Jurisdictions of the Realm, and

according

x Brodon lib. 2. de acquire Domino ca. 16.

Britton 1.

according to Bracton is Autor juris unde jura naf- & Bracton cuntur, the Author of the Law, and from him all lib. 2. Laws are derived, Omnes sub eo & ipse, sub nullo nisi tantum sub Deo parem autem non habet in Regno a idem lib. Suo, quia sic amitteret praceptum, all his people are 1. ca. 8.5. fubject unto him, and he under none but God only, hath none equall unto him in his Kingdom, for if he had; he would loofe his power of Command b ca. 8. 9. or Authority: and in another place of his book, repeating that Opinion & well founded Doctrine faith. Parem autem habere non debet, nec multo fortius superiorem maxime in justitia exhibenda, that he ought not to have an equall, nor which is more any superior, especially in the Administration of Justice, which made the Judges in the 13th year of the Reign of King James, rightly stile him the fountain of Justice.

And this dernier ressort or appeal hath been Coliedge Case en fo necessary an Assistant to our Laws and Courts Cokes I Reof Justices, as the reverend Judges thereof have ports 74. not seldome been constrained to pray in ayd of it, and therefore a Marginall (d) Note in an old Stathanis Abridgment, hath this remarque that in Hillary Term in the 13th yeer of King Henry the 7th, Cheeseman being under Sheriff of Middlesex, and having arrested un Cutpurse en le Sale de Westminister, a Cutpurse in Westminister-Hall, hastement veign un Fog & fut Serjeant Porter, le Roy A donques le Roy eant (e) & Westminister e Hill. 13 H. & prist le dit Cutpurse del vic en le Sale Sur que le 7. en le marvic lui complaint al Fineux Chief Justice & mand Stathanis aun des Marschalls ovesque le mace pour le dit Por- bridgement.

c Magdalen

tor qui don respons quil ne voil vener al request dast des Tipstaves Sur que le Chief Justice alast al Chanc. & monstra le matter & le Chanc mand soon Serjeant d' Armes pour liu & il respond a lin quil conust lui pour Sergeant nostre Seigneur le Roy & quil voil aler onesq; lui & donques il veign & le Cheife Tustice command le vic de liu arrest quantitvei & issint il fit & il a lui fit rescous surque le dit Justice alast. al Koy & monfire le matter & le Roy command le dit Fog d'obier le Justice & de vener a le Court de bui submitter a le ley issint il fit & fut mis a son fine & trone pleg de fine faciend, whereupon one FogSerjeant Porter of the King, the King being then in his House or Pallace of Westminister, came haftily and took away from the Sheriff, being then in the Hall the faid Cutpurle, whereof the Sheriff complaining to Fineux Chief Justice of the Court of Kings-Bench, he fent one of the Marshalls with his Tipstaffe for the faid Porter, who answered, that he would not come at the request of any of the Tipstaves, whereupon the Chief Justice went unto the Chancellor and shewed him the matter, and the Chancellor fending his Serjeant at Armes, for him, he answered him, that he knew him to be the Kings Serjeant at Armes, and that he would goe with him, and being come, the Chief Justice commanded the Sheriff to arrest him when he faw him, who did arrest him, but he rescued himfelf, and thereupon the Chief Justice went unto the King and shewed him the matter and the King commanded the faid Fog to obey the faid Justice and to go unto the Court, and submit himfelf

felf unto the Law, which he did, and was put to

his fine and gave foreties to pay it.

Which proofs and arguments, touching the Subordination of the Judges or their Courts of Juflice, are not nor ever were intended for the reverend Judges and Sages of the Law, or the Students, Professors and Practisers thereof, whose learning and Judgments neither fcrupled or needed it, but unto those vulgar and mechanick busic headed and unquiet part of the People, qui nesciunt se ignorare, will not own any ignorance, when they are most ignorant, but will be fore to diflike every thing which they do not understand, because they take their measures by the shortlines of their vulgar take and incomprehensive capacities, which makes them to be fo reftless and unsatisfied in their miflakings, and folincked and wedded unto them, &I had not been fo large in clearing that particular (which unto some may feem more then requisite) but that it may justly be feared that those opinions, or impreffions if not diffodged and fully convinced, thay as those long agoe condemned Herefies and Errors in the Church, did in our late distractions and diffempers rife up again under the pretence of new notions and gain, a kind of Succession too like a perpetuity.

And therefore every man may without any the Incumbrances of doubts or controversies, be Properties of the Subject waith comp boulls

meny of the matters which may concern any man

## CHAP. VII.

That the King or the great Officers of his Houshold may punish those that doe infringe his servants priviledges, and that any of the Kings Servants in Ordinary being arrested without leave, are not so in the custody of the Law, as they ought not to be released untill they do appear or give Bayl to Appear and Answer the Assion.

37. E. 3. ca. 18. & 38. E.3.9.

7 Hen it must or should be acknowledged. that notwithstanding that by the Statutes made in the 37th and 38th years of the Reign of King Edward the third, untrue Suggestions made to the King and his Councell were prohibited and to be punished, and that by a Statute made in the 42d. year of the Reign of that King no man was to be brought to answer any acculation to the King without prasentment before Justices or matter of Record, yet matters extraordinary, or fuggestions which had truth or evidence to accompany them, were not by any of those Acts of Parliament forbidden, and howfoever that by a Statute or Act of Parliament made in the 17th year of the Reign of King Charls the Martyr, the Kings Privy Councel were restrained from intermedling in matters concerning Freeholds, and the Properties of the Subject which comprehends many of the matters which may concern any man brought before them, or accused, yet there is no restraint of Arrests or sending for Delinquents by the

the Kings Messengers, or prohibition against the right use of them, or the high and super eminent authority of the King and the Lords of his Honourable Privy Councel in cases to prevent Duells, and make abortive dangers and inconvenient to the publique, punish Riots, unlawfull Affemblies and mifdemeanors, beyond the reach and Authority of Justices of the Peace, & many other emergencies, who may certainly as legally make use of Messengers or Sericants at Arms to compell. disobedient and refractory persons to appear before them, as the Lord Chancellor, or Lord Keeper of the Great Seal of England, by or under the Kings authority, doth now and hath long agos used to do, in cases of contempt of the Processe of that Court after an Attachment with Proclamation and Commission of Rebellion, or as the Lord Privy Seal, did usually in the Court of Requests, after the like Processe could not apprehend or take the person contemning his authority, or not appearing before him, for unto what purpose shall that honourable and venerable Assembly who Sir Edward Coke (g) faith, are Profitable in- g Cokes 4 fruments of the State, and do bear part of the Sove- Part of the raigne-cares, and imploy their time and endeavors Institutes, carin the Execution of the Duty of their Oathes and 2.53. Places, and that great trust incumbent upon them, if they may not enjoy a coercive Power, which the Judices padanes, petty Judicatures, and even the Pye-Powder Courts of the Kingdome do enjoy. or should make it their business to baffle their own authority, and only fend for People to come un-

before them do what they please, but should within their Conusance and Jurisdiction, according to a Maxime and Rule of the Civil Law well allowed and entertained by our Common-Law, Cum aliquid conceditur id quoque concedi videtur fine quo id efficere non potes, when any Jurisdiction or authority, is granted, that also which should support and attend it, seemeth to be granted with it, have as great a power of coercion to attend their authority as the Parliament, the greater and more extraordinary Councel under the King and Head thereof, is allowed and all other Councels in all the Kingdomes and Republiques of Christendome, and are not therefore to be denied a just and competent Power to attend them in the administration of the affairs or business of the King intrusted unto them, or to be debarred their inspection into all the affairs of the Kingdom, concerning the good & welfare of the King & his People, upon cafualties, accidents, and cases extraordinary, reformations of abuses by the Kings Edicts or Proclamations, and in the deficiency of Laws, in matters or things not foreseen or provided for by Laws, which cannot be either to prophetick or Lord Chan-? comprehensive, as to supply or give a Remedy to cellor Ellef." all things, but must leave many things to ragione di Stato, reason of State, and the cares of our Paupon the post ter Patrie, Father of his Countrey and Kingdome to provide against necessities, otherwise irrelitable, which can neither at all times tarry for the calling of a Parliament, or the suffrages of it, or

39.E. 3.4 6 35. Mich. 40 E.3.4.34. mere in his nati.

be communicated unto the vulgar, especially in unquiet or cloudy times, when our Peace, the bleffing of our Nation, cannot either enjoy her felf, or impart her comforts to the People, without the more then ordinary vigilance of the King and his Privy Councell, where the King himself is very often present, especially in the absence of that, as ancient as the Raign of King Edward the third, then and many ages after well regulated Court of Star-Chamber, many of whose Judges were the Kings Privy Councell, the King himfelf being there rarely or feldome present, and of that necessary Court of the High Commission, preventing and watching over such abuses or mildemeanors, as might either scandalize or disturbe the peace and good order of holy Church, and fuch as served at the Altar.

And certainly that formerly great power and authority which resided in the Steward or Majordomo of the Kings Houshold, who as Fleta hath recorded it, enjoyed in the Reign of King Edward the first such an extraordinary power, as he did vicem gerere, exercise as it were the Office of Deputy to the Lord Chief Justice of England, whose Office and place untill it was by that prudent Prince restrained and limited to the Authority and Jurisdiction which it now enjoys, was much more large and extensive than now it is; and that of the Lord Chamberlain of the Kings House, whose power and priviledge over that part of the Kings Servants which are under his Authority, (b) being heleta lib. 2. exempt from that of the Lord Steward, having ca. 3. 6.6.

been

been not by any Act of Parliament prohibited. may not be thought to exceed the power and authority inherent in their Offices and places, when they shall punish or commit to prison any who shall attempt to violate or infringe the honour and priviledges of the Kings House or Servants, derived unto them from his Supreme Authority, who having (i) Ordinariam Jurisdictionem in regno suo. & pares non habet neque superiores, an Ordinary and Supreme Jurisdiction, and hath neither Peer nor Superior, may as well protect his Servants in bus, ca. 15. his affairs and bufiness in his House, or about his Person, and punish any that shall hinder them therein, as the Judges in his Courts of Justice, who neither have or can claim any other power or authority, than what he delegates or entruffeth them withall, do upon all occasions in the Cafe. of their Officers, Clerks, or menial Servants.

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They therefore who shall fo much fuffer their reason and understanding to wander and be mislead, as to deny the Kings most Honourable Privy Councell, or any other Court within their Cognisauce, Power and Authority, tueri Jurisdictionem, fuch a coercive power as may support their Jurisdiction, may think but never find, they have any ground or cause for it, and if they please to tarry for a conviction, untill the never failing unhappy consequences, shall bring them too late to acknowledge that which in wiridi observantia, by late abundant sad experiments is more then a litthe visible in the disorders of the present Church Government, occasioned by the reverend Gover-

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nors want of power, who having their hands as it were tyed behind them, are made to be as good old Ely admonishing and reproving to no purpose, and how little the directive or commanding Power of Laws will fignifie, where the coercive

shall be absent, may bitterly repent it.

And will meet with as little reason to second or assist their opinion that a priviledged person imprisoned contrary to his priviledge, is so in the custody of the Law, as not to be able to claim or make use of his priviledge to release or discharge, him, when the frequent use of discharging men out of prison by Habeas Corpus, Supersedeas or Writs of Priviledge, and their Bayles or Sureties given for their appearances discharged: And in matters of Parliament Priviledge can teach and prove the contrary, for in the Case of Tremynmiard, a Burgess of Parliament in the Court of Kings-Bench in Easter and Trinity Term in the 38th year of the (k) Raign of K. Henry the 8th. the k Dyer Pafe. faid Tremynniard was discharged by his Priviledge & Trin. 38 although he was arrested upon an Utlary after H. S. Judgement, and the Judges of the Court of Kings Bench, did adjudge and declare, That every Priviledge is by prescription, and every prescription which soundeth for the Common-weal is good although it be a prejudice to any private person; And that such a priviledge hath been alwayes granted by the King to his Commoners at the request of their Speaker the first day of the sitting of Parliament : And it is common reason that for a much as the King and all the Realm hash an interest in the Body of every

of its Members, it seemeth that the private commodity of any particular man ought not to be regarded, for it is a maxime, That magis dignum trahit ad seeminus dignum, the more worthy is to be preserved before the tesse, and concluded, That the Parliament is the most High Court, and hath more Priviledges then any Court of the Realm, and that in such a Case every Burgess is to be priviledged where the Attion is but at the Suit of a Subject, and that by such a temporary discharge the Execution is not discharged, but remaineth.

1 Brooke Tit. Protection 51.

When as men protected, that were not the Kings Houshold Servants, had their (1) Protections allowed after the commencement of the Action, sometimes after Issue joyned, at other times of the nist prins, or Triall at other times after the Verdict given, and sometimes at the dayes in Banck, and where any Defendant neither protected or priviledged was imprisoned, he was not fo believed to be in the Cuftody of the Law, but that the Judges, or any one Judge of the Court out of which the Process or Writ issued, might not as well out of the Term as in the Term, grant in their Subordinate Jurisdiction, a Supersedeas, quia improviae or erronice emanavit, because there was fome Error or mistaking in the awarding or granting of the Writ by which he was taken: And those Authentique Books of the Register of Writs, old and new Book of Entries, and the prefidents therein contained, will fufficiently testifie that arrests of (m) priviledged persons, and the goods or persons of priviledged persons, have been and

m Register
of Writs,
old and new
Book of Entries, Tit.
Priviledge
and Protecti-

and ought to be discharged from Attachments, Arrests and Imprisonments, and that which they would call the Custody of the Law, by Habeas Corpus, Supersedess, or Writs of priviledge, and their Bayles or Sureties given for their Appearances,

discharged.

But however the pride and difrespectfull and disobedient humors of too many of our Nation be now so much in fashion, as to quarrell with every thing of Authority, and the Regalities of their Soveraign, the dayes of old, and Ages past will evidence, that the before mentioned Priviledges of the Kings Servants in Ordinary, were for ought appears to the contrary believed to be so legall and reasonable.

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## CHAP. VIII

That the aforefaid Priviledge of the Kings Servants in Ordinary, hath been legally imparted to such as were not the Kings Servants in Ordinary, but imployed upon some temporary and casuall affairs abroad, and out of the Kings House.

8 it was defired and thought fit, and neceffary to be communicated to fuch as were not the Kings Servants in Ordinary or his Domeflicks, but only imployed as extraordinaries upon fome of his special affairs or occasions, which were but Temporary, and to that end it was requifite that some fignification or notice should be given that they were fo imployed, and that they should not be arrefted, imprisoned or diffurbed in it, but be protected from it, the like being also done when any of the Kings Servants in Ordinary where implayed out of the Kings House or Pallace by their Writs of Protection under the great Seal of England, for otherwise probably it would not have been known, that they were his Servants either ordinary or extraordinary, or what was their bufinefs.

And therefore in the Register of Writs, a Book in the Statute of Westminster the second, made in the 13th year of the Reign of (n) K. Edward the first in the year of our Lord 1285, called the Register of the Chancery, and of great antiquity and authority in our Laws, and very well deserving the respect

n 13 E. I.

respect is paid unto it, being but a Collection of Writs out of the publick Records made and granted under the Kings Great Seal, warranted either by the Common-Law, or grounded upon some Acts of Parliament, (a) Protections have been granted o Register under the Great Seal of England, with a Supersedeas of Writs, of all Actions and Suits against them, in the mean 22, 23. time, unto some that were sent into Forraign Parts, or but into the Marches of Scotland, or Wales, or in Comitativa, retinue of some Lord or Person of Honor employed thither in the Kings Service, or unto fuch probably as were none of the Kings Servants in Ordinary or Domestick, but as more fit persons were only sent as appeareth by the Writs, upon some special and not like to be long latting occasions, with an exception only of certain Actions and Cases, as in Writs of Dower (for which Sir (p) Edward Coke giveth us the Reason) because the p Coke First! Demandant may have nothing else to live upon, part Inflit. in Quare Impedits, Quare non Admisits, or Assizes 131. of Darrein Presentment, for the danger of a lapse for not prefenting within fix months, in Affizes of Novel Differfin, to restore the Demandant to his Freehold wrongfully entred upon and not feldom gave their Protections quia moraturus, unto some Workmen, Engineers, or others imployed in the Fortification of some Castle or Fortres, sometimes: but as far as the Marches of water, with a command that if they were incarcerati, or imprisoned, they should be forthwith released; and at other times upon his Protections granted quia profecturus, revoked his Protections because the

party.

q Vide Register of Writs 23, 24.

party defiring to be protected, did not go as he pretended upon the Kings message or bnfiness, or having finished the Kings bufiness, (q) imployed himself upon his own, and upon better information that he did continue his imployment in his fervice, revive it again; sometimes sent his Writ to the Justices not to allow his Protection, because the party protected did not go about the bufiness upon which he was imployed; and at other times fent his Writ to the Sheriffs of London, to certifie him whether the party protected for a year did go in obsequium sum versus partes transmarinas in Comitativa, &c. upon the Kings bufiness in the company and attendance of A. B. (possibly some Envoy) (which makes it probable that the party protected was rather fome Stranger, than any of the Kings Servants ) and more likely to be in the cognisance of the Sheriffs of London, than of the King, or any of the Officers of his hononrable Houshold, as may appear by the subsequent words of the Writ, which were, (r) an in Civitate nostra London moretur propriis negotiis suis intendendo, whether he remain in the City and followeth his own bufiness: And not only granted fuch Protections, but as was in those times held also to be necessary and convenient, added a clause de non molestando, of not troubling the party whilst he was thus imployed in his service, homines, terras, &c. his Lands, Servants, &c. except or in regard of any of the aforefaid Pleas which were usually mentioned in the faid Writ of Protection.

r Register of Writs, 24.

And

And if it were directed to the Sheriffs of London, a clause by a rule of the Register was to be inferted, dum tamen idem, so as the protected Register of person (probably imployed in the victualing of Writs, 24. a Town or Fort ) do fatisfie his Creditors for Victuals bought of them. And where the Protections appeared to be granted after the commencement of the Action, did fometimes revoke them; but if it were for any that went in a Voyage that the King himself did, or other Voyages Royal, or on the Kings Messages for the business of the Realm, it was to be allowed and not revoked; and the Kings Protections in that or any other nature, had the favour and allowance of divers Acts of Parliament, either in the case of such as were not their Servants, or otherwise, and had fuch respect given onto them by the Law, and the Reverend Judges in Bractons time, as he faith. Cum (f) breve Domini Regis non in fe contineat ve- f Bracton ritatem, in hos fibi caveat Cancellarins, if the mat-lib. 5. De ter be not true, the Chancellor, or Lord Keeper Essoniis, ca. of the Great Seal of England is to answer for it: 2. 6 3. feet. and quando quis Esfoniaverit de malo veniendi, quia 3. in servitio Domini Regis admitti debet, Essonium & allocari & dies dari dum tamen warrantum ad manum habet, cum de voluntate Domini Regis non fit disputandum.

And King Edward the third did in the 33th.
year of his Reign, by an Act of Parliament de Protectionibus, concerning the repealing of Protectionibus 33 E. 3.
ons (t) unduly granted, by his Writ directed to An. Dom:
all his true and faithfull Subjects, now printed 1304.

amongst

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amongst the Statutes and Acts of Parliament, and allowed the force and effect of an Act of Parliament, as many other of the Kings Mandates, Precepts or Writs antiently were, declare, that for as much as many did purchase his Protections falfly, affirming that they were out of the Realm. or within the four Seas in his fervice, did provide. That if their Adversaries would except or averye that they were within the four Seas, and out of the Kings fervice, in a place certain, fo that they might have well come, and if it be proved against the Defendant, it should be a default; and if such Protection be on the Plaintiff's behalf, he should lofe his Writ and be amerced unto the King; I which can fignifie no less then that a Protection granted where the party is really and truly in the Kings fervice, should not be disallowed or refused). which the Commons of England were used so little to disgust, as that in the 47th year of the Reign of that King, they did in (u) Parliament only Petition, that any having a Protection for ferving in the Wars, and do thereof fail by one month. to the deceipt of the Kings people, fuch Protection to be void. To which the King only answered, Let the party grieved come into the Chancery and he shall have remedy. The Act of Parliament made in the first year of the (w) Reign of King Richard the fecond, ordained, that no Protection with a clause of Volumus, our will and pleasure is that he be not defurbed with any Pleas or Process, except Pleas of Dower, Quare Impedit, Affise of Novel Diffeisin, last Presentation, and Attaint, Though and.

n 47 E. 3. ret. Parl. m. 28.

w 1 R. 2.

and Pleas or Actions brought before the Justices Itinerant, shall be allowed where the Action is for Victuals taken or bought upon the Voyage or Service whereof the Protection maketh mention, nor also in Pleas of Trespals, or of other Contract made before the date of the faid Protection. The Statute of the 13th. year of the Reign of the aforesaid King, which was made for that many people, as well such as be not able to be retained in War, (for in those dayes (x) divers of the No-x 13 R. 2. bility and Gentry and their Servants, were ac-ca. 16. customed to be retained by the King to serve in his Wars) as others, by the testimonial of the Governors of the Marches, Captains of Garrisons, Admirals, and others, did purchase Protections with a clause of Volumus, or Quia profecturus, because be was going in the Kings fervice, after a Plea was commenced against them, whereby to delay the faid Plea, and after do not go into the faid fervice; ordained, That no Protection with a clause Quia profecturus, be allowed after the Suit commenced before the date of the Protection, if it be not in a Voyage that the King himself goeth, or other Voyages Royal, or in his Messages for the business of the Realm.

But faith that Act of Parliament, it is not the intention of this Statute but that the Protection with the clause Quia moraturus, because the party protected abideth in the Kings service, be allowed in all cases as it was before that time. And if any tarry in the Country without going to the service for which he was retained, over a convenient time after that he hath any Protection, or return from the same ser-

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vice, if the Chancellor be thereof duly informed, he shall repeal such Protection as it bath been used before that time. In the 9th, year of the Reign of King Henry the 5th. Protections were granted to them that were in the Kings service in (y) Normandy and France, or which should pass with him into

y 9 H. 5.

France.

Z 14 E. 4.

By an Act of Parliament made in the 14th. and 15th. years of the Reign of (z) King Edward the 4th. it was ordained, that the like Protections as were granted by an Act of Parliament made in the oth. year of the Reign of King Henry the 5th. cap. 3. to such as were then in the Kings service in Normandy or France, or would pass with that warlike King Henry the 5th. into France, should be observed and avail for all such as should pass over with him. By a Statute made in the 6th. year of the (a) Reign of King Henry the 6th. there was a rehearfal and confirmation made of the aforefaid Statute in the 9th. year of King Henry the 5th. touching Protections granted to those who were in Wars in Normandy or France, which extended it further then the preciser time of their present And by an Act of Parliament made in the 8th. year of the (b) Reign of that King, there was only to be excepted in all the Protections of fuch as should go with the King into France, Writs of Affile of Novel Diffeifin. King Henry the 7th. in the 4th. year of his Reign, did by an Act of Parliament grant Protections (c) unto all which then were or after should be in the Kings fervice in Britany, together with certain Immuni-

b 8 H. 6.

2 6 H. 6.

64. 2.

CA. 13.

c 4 H. 7.

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ties granted to the Feoffees, Executors and Heirs of them which bould dye in the service, ( which was more than a personal protection:) And by another Act of Parliament made in the 7th. year of his Reign did ordain, That every person that Sould be in the Kings wages beyond the Sea, or on the Sea, (bould have a Protection. By an Act of Parliament made in the 11th year of the (d) Reign ofd 11 H. 7. the faid King Henry the 7th. mentioning in the ca. 18. Preamble, That it is not reasonable, but against all Laws, reason and good conscience, that the Kings Subjects going with their Soveraign Lord in Wars, attending upon him in his person, or being in other places by his commandment within or without his Land, ( as fome of his menial Servants may poffibly) whilft he is absent from his Palace either in the Kingdom or without, any thing foodld lofe or forfeit for doing their true duty and service of Allegiance; it was cracked, That no manner of person or persons what soever he or they be, that attend upon the King and Soveraien Lord of this Land for the time being in his person, and do him true and faithfull Allegiance in the same, (which certainly his Houthold and menial Servants are understood to do) or be in other places by his commandment in his Wars within this Land or without, be convict or attainted of High Treason, nor of other offences for that cause by Act of Parliament, or otherwise by any Process of Law, whereby to lose or forfeit life, lands, possessions, or rents, goods, chattels, or any other things, but be for that deed utterly discharged of any vexation, trouble, or los; and any Act or Process

e 3 H. S. .ca. 4.

of Law contrary thereunto to be woid. And King Henry the 8th. did likewise by an Act of Parliament enact, That (e) they which were or (bould be in the Kings wars beyond the Seas, or upon the Sea. (bould have a Protection of Quia profecturus, or moraturus, cum clausula volumus, as aforesaid.

Such or the like Protections being held to be fo necessary in the former ages, when the people of England not enjoying under the Papal Tyranny fo great an happiness and liberties as they have done fince the Reformation, were so little of kin to the fourmuring Ifraelites, as they troubled not the ears of their Kings or their Courts of Justice with complaints against Protections, when there was no deceit in the obtaining of them, or abuse in the use of them, when in the third year of the Reign of King John, a Protection was granted by him unto one (.f) Peter Barton the fon of Peter 3. Johannis Barton, then living or refiding in Poicton, parcel parte unicat of his French Dominions, for his Goods and Efrate as well as for his person, as his Father had the day that he died; and commanded all his Bayliffs and Officers in that Country, to protect and defend them fieut fervientem fuum quoufque fibi fervierit, as his Servant for fo long time as he should serve him. Robert de Ver, qui de licentia Regis peregre profecturus est in terram Hierusalem. habuit literas patentes de protectione sine clausula, duraturas per trienninm, had the Kings Protection for three years, without any clause or exception; g Rot. Clauf and (g) Gerard de Rodes travelling to the fame

place, had a Protection with a clause, quod quietus

f Rot. Pas.

32 H. 3.

effet

effet de fecta Comitatuum & Hundredorum, & de omnibus placitis & quarelis, exceptis placitis de Dote unde nihil habet, affifa Nova Diffeifina & Ultima prasentationis Ecclesiarum, duraturas quamdiu idem Gerardus fuerit in peregrinatione predicta, that he should not be molested with any Suits in the County Courts and Hundreds, and with any other Pleas and Actions, except Actions or Pleas of Dower, Affises of Novel Disseisin, and the last presentation unto Churches, to remain in force as long as the faid Gerard should continue in his travels (or Pilgrimage) as aforefaid; and a Protection granted by King Edward the first, in the first year of his Reign, to Robert de Plessetis, fine clausula, without any clause or condition, to endure untill Easter then next following; and the like unto Hugh de Weston, who had the Kings license to travel to (h) Rome, to endure untill h I E. 1. Michaelmass then next following; and King Ed. Rot. Pat. m. ward the 4th. by vertue of his Kingly Prerogative, 3. as the Writ and the Record declared, granted his Protection unto John Namby Gentleman, Executor of william white alias Namby, for (i) himself i 22 E. 4. and his Servants, and their Lands and Estates, to m. 17. endure for three years: very many of the Subjects of England in those dayes, and the Reigns of our former Kings, travelling on Pilgrimage for devotion or penance to Ferufalem, or St. James of Compostella, or which were Cruzadoed or volunta- k 2 part of rily went unto the Holy Land fo called for reco- Purchas Pilvery of it, in such numbers as about the year of our grimage, Lord 1204. being in the (k) latter end of the 1225. Reign.

(328)

ca. 7.

Reign of King John, fixty thousand English took the Crofs for the Holy Land: whose Protections, faith Fleta, were not in those dayes disallowed in I Fleta lb.6. the Conrts of Justice, because it was then (1) understood to be in causa Dei, the cause of God, or for fome which were fent on the Kings mellages or affairs to Rome, Normandy, or Gascoigny in France, or other parts beyond the Seas, or in those many our English Warlike Expeditions and Armies fent to Jerusalem, France, Spain, and Scotland, or the Borders thereof, in the Reigns of many or most of our Kings and Princes, from William the Conquerors entring into England and the subduing of it, untill the Reign of King James, and into wales or the Borders thereof, untill the Reign of King Edward the third, when the Nobility and principal part of the Gentry were even in those times more likely then the Commonalty or vulgar to be in debt, and wanted not upon occafions the credit and good will of the Common people to trust them, and freedom from Actions at Law and troubles in the mean time; and the many thousands of our Tenants in Capite, who by the Tenure of their Lands, as well as by the bond and obligation of their Loyalty to their Kings and Princes, were to attend them in the service of War not only upon their Summons and Commands in their Foreign Expeditions, but at home in their defence against Rebellions, and sudden Insurrections, and had in the mean time no doubt Prorections, and freedom from Suits and Arrests, whose Court Barons and Leets more then now orderly

orderly kept, permitted not their Tenants disobedience unto them or their Jurisdictions, or an enhance of the price of their Commodities; and their Lands so entayled, as they could not if they would either borrow or owe much money: When the Nobility and Gentry, like the Stars in our Hemisphere, kept their courses, and great Hospitalities, addicted themselves to actions of greatness, goodness, charity and munificence, and their numerous Tenants depending upon them, returned them submissive and humble obedience, a reverential awe and gratitude, and held much of their Lands upon trust of performance of their Services, and many Husbandry works, infead of Rents, and in that were more endebted to their Landlords, and entrusted by them, then their Landlords were unto them; who did not, as now they do, with their Wives and Daughters refort to London, to learn vice and vanities, and run into Debt more than they should do; nor make themfelves at costly rates fo great and often purchasers of Transmarine Wares and Commodities, which the small Income of the Customs in the beginning of the Reign of Queen Elizabeth, when our Clothing and Exportation far exceeded our Importation, will witness, when the profit of her Customs in both was at first let to Farm but at 13000 L per annum, and afterwards at no more then 50000 l. per annum; when there was not fo great and confuming expences in Coaches, Wine, and other Foreign Toyes and Trifles; when by reafon of 600 Monasteries and Religious Houses, and

the great Retinues and number of Servants kept by them, and the Nobility, Bishops and Gentry, and depending upon them, the younger Children of the Nation were fo largely provided for, as there were not fo many Trades or Apprentices in London as there have been of latter times, fo many Taverns, Cooks, or Trades of pride and luxury, to entice the Nobility and Gentry into debts and expences; when the rates and prices of their Wares and Commodities, honester made, and of Victuals and Houthold provisions, were limited and bounded by our then better than now executed Laws, and Trade was not let loofe to all manner of fraud and unlawfull gains, and the Companies or Corporations of Trades were not so many Combinations, to adulterate and abuse the Trade of the Kingdom, as now they do; when there was not so frequent trusting by Trades-men, as now of late, only to encrease their gain, double and raife their prices, and make a more then ordinary ufury upon the kindness they pretend to do their Customers by trusting of them; when Trade and the furnishing of vice and excess, had not made the Gentry fo endebted to the City, who are not in their Countreys or Neighbourhood fo much under the lash of their complaints or profecution: when the Church-men, by reason that some contracts were upon distruct of performance fworn and bound up by Outh, would ratione laundali fometimes take occasion to draw into their Courts the cognifance of Debts, and Excommunicate them, untill they were about the Reign of King Edward

Edward the first prohibited by the King and his Courts of Justice. And Usury was as well before as long after accounted such a mortal sin, as Christian Burial, and the power of making last Wills and Testaments was denyed unto them, the perfonal Estates of the Usurers conficated, the dying in debt reckoned a fin punishable in the next World; all or some of which might give us the reason why there was in former times but very little complaint against Protections, (for most of that little which appears of the use or pleading of Protections in our Law-books or Records, through so many past ages, were in Pleas or Actions concerning Lands, or Replevins, &c. but few in personal Actions, or Actions of Debt) and those which do in every Kings Reign appear in our Records to have been granted in respect of the many occasions and importunities which might otherwise have induced the granting of them, to have been but a few in respect of many more which might have been granted, if the prudence and care of our Kings had not restrained or limited their own power and authority therein; for that there were then either few, or out-lying, overgrown, or long-forborn Debts, or the reason of the parties protected being imployed in the Kings Service, (which was and ever is to be accounted the interest of every man, and a concernment of the Publique ) was enough to pacifie them; and the care and reverence of the King and his bufiness, taught the people to obey rather then dispute that necessary part of his Prerogative, which deferves Uuz

of Nations. Queen Elizabeth by the advice of as wife and carefull a Councel as any Prince of the World was ever bleffed with, did in the 17th. year of her Reign, by her Writ under the Great Seal of England, directed to that (m) learned and judicious Lawyer Sir Nicholas Bacon Knight, Lord Keeper of it, (who allowed and fealed it) and the Lord Treasurer of England, and her Justices, Barons of the Exchequer, Sheriffs. Mayors, Bayliffs, &r. fignifie, that she had taken into her Protection for three years Martin Frobifber Gent. (probably the eminent Sea-Captain) and his ordinary Servants, whom she had imployed in her affairs beyond the Seas, and therefore by vertue of her Royal Prerogative, which she would not have disputed, commanded every of them, that during the faie Martin Frobifbers absence, and before his departure, and after his return, during the faid three years, they should not fuffer him or his Servants in ordinary to be arrested, attached or outlawed, or to be molested or disquieted in their Persons, Goods, Chattels. Lands or Estates; and that the Justices in their feveral Courts thould superfede and discharge all Actions, Plaints and Suits tending thereunto, and not proceed thereupon; and may give us to understand, that howsoever in warbams Case in the 2 oth. year of her Reign, before her Judges of her Bench, her Protection fignifying that the would not have her Prerogative disputed, (n) was with-

out debating as the Writ commanded not allowed,

n Moors Reports Warhams Cafe, 239.

17 Eliz.

but

but filently laid by, possibly by reason of variance or incertainty of time, or upon some desect of form or words in the Writ, or in regard that it mentioned not whether the party defiring to be protected was (o) profecturus, or moraturus, to go or abide in o Cokes 1 the Queens service, or because the Writ of Pro. part Instit. tection came too late, or the nature of the Action, ca. 11. 130. or some matter in the Pleading or the Iffue, which was omitted by the Reporter, would not admit it; vet the disallowance of one Protection, is no argument or enough to conclude that no Protection was or ought to be allowed, when fo many do appear in the Records and Year-Books of our Laws to have been allowed: For certainly if that great Queen had the year before 1588. and that almost unavoidable ruining storm of the Spanish Armado, which threatned the deftruction of her and this Nation, given her Protection Royal to Sir Thomas Gresbam Knight, that Prince of Merchants, for the fecuring of his person and Estate from arrest or troubles, when for her fervice and the fafeguard and defence of the Nation, he had stretched that grand and all the Credit which he had in Foreign parts, to dreyn the Banks thereof, and to borrow and take up at Interest so great a part of the moneys thereof, as he prevented the King of Spain therein, and fo disappointed him of money, as he could no fooner fend that formidable Navy against England, which he defigned to have fent the year before, whereby the was not fuddenly attaqued, but had time to provide a gallant refiftance; and whether the clause of commanding her Prerogative

tive therein not to be disputed, had been inserted or not, (which in such a secret and important affair ought not to have been made publick, either in such a Writ or in a Court of Justice ) every man that had not fued a Bill of Divorce against his reason, common sense and understanding. might have believed fuch a Protection in fuch an exigent to have been as legal as it would have been

for publique good and necessary.

p Fitzherbert Tit. Par. 99. 6 IOI.

And although the Reverend Judge Fitzherbert was of opinion, that a Protection of the King (p) quia in fervitio Regis, because the party to whom it was granted was in the fervice of the King, or the like, is not to be allowed for a longer time than a year and a day, being supposed to be a competent time for the dispatch of such an emergent or extraordinary imployment of the Kings as was pretended, (which no Act of Parliament hath yet limited, there being a possibility of a longer time of the imployment, either as profecturus or moraturus, in the going or tarrying, when the time of the disparch of business cannot be circumscribed, especially in Foreign parts, whither and whence in longer or fhorter Voyages the winds as well as other occasions and accidents are to be arrended) and that in the 39th. year of the Reign of King Henry the 6th. a Protection was not allowed, because the Defendant having obtained it in regard that he was in fervitio Regis. and fent to Rome; Pleas of Dower and Quare Impedit were not as they used to be, and ought by Law to be excepted in the Writ of Protection,

vet Mayle one of the Justices of the Court of Common Pleas then faid, that in a (9) Voyage q Brooks A. Royal, or in bufiness concerning the Realm, or bridgement in an Embaffage or the like, a man should be pro- Tit. Protected; and a Voyage Royal, faith Fit Therbert, tection, 67. is where the (r) King goeth to War, or hisr Fuzher-Lieutenant or Deputy Lieutenant; and that a bert Nat. man is to be protected when he is in the Kings Protection, fervice for guard of the West Marches of England F. et H. towards Scotland; and in the 21th. year of the Reign of King Henry the 6th, a Protection was allowed after the Nisi prine, or lifue tryed; and (1) fometimes for the Plaintiff, as well as the To- f Brooke nant or Defendant, as in the a4th. year of the Tit. Pro-Reign of King Edward the 4th. Effoines of the tection, 51. Kings fervice being likewise ordinarily allowed by the Judges, upon allegation or proof of the Kings fervice at the time of casting or praying for them, there being an ordinary course of Essoining allowed communi jure, of common right, to fuch as are not in fervitio Regis, or the Kings Servants, as de malo letti, for fickness, &c. and are now in many Actions allowed of courfe, without any proof or question made thereof: 'And those kind of Protections were foreffectual and respected in the 21th year of the Reign of King Edward the id: as in an Action where the Queen (who was to enjoy fome greater Priviledges then others of the Subjects ) was Plaintiff, fuch a (t) Pro- Brooks A. tection was allowed; and it is not without fome bridgement warrant or reason of Law observable, that the Tit. Pro-Protections and Effoines which were quia in fer-tection, 44.

vitio Regis, in regard that the person to be protected was in the Kings service, were most commonly quia profecturus, because he was to go or abide upon fome imployment for the King, do mention per praceptum, or in obsequio Domini Regis, that they were fent by the Kings command, or upon his fervice; which in case of ordinary or domestick service, needs not to be so much mentioned by the words per praceptum, or in obsequio Regis, the word obsequium being by the Civil Law only understood to be reverentia & honoris exhibitio erga parentes & patronos, an honour and reverence of Freemen to their Parents and Patrons. contradiftinct to the duty of work or labour in Servants; that fuch men were commonly Strangers, and none of the Kings Houlhold Servants; and that in those early dayes and times of Popery, when there was fuch an entercourse betwixt England and Rome, and our Kings had fo much ado to guard the Rights and Priviledges of themselves and their people, from the Papal attempts and usurpations, and many of our Kings had in their possession Normandy, Aquitain, and in other Provinces of France divers Forts and Caftles, they might well have occasions of fending many that were not of the Houshold, which were better to be spared then those of whom they had daily use or occasion of service; and that where the Protections were quia moraturus, it was not feldom mentioned to be about fortifying a Castle or Town, or providing Victuals for them or an Army, and may rather be deemed to be none

of the Houshold, for that in the Register of Writs fome Protections are revoked by the King, because they pretended to go when they were commanded, but did not, or followed their own occasions and affairs, not the Kings; which cannot be easily understood of the Kings Servants in ordinary, who in those dayes would not be willing to absent themselves from such profitable and eminent services

and imployments.

And (u) Sir Edward Coke in his greatest aver- u Cokes Infion to the just Rights and Regalities of the situtes, or Crown, is positive, that besides the Kings gene-Comment. ral Protection of his loyal Subjects, there is a par-upon Littleticular Protection of two forts, the one to give a ton, 130. b. man an Immunity and freedom from all Actions 6 131. a. or Suits, the fecond for the fafety of his person, Servants and Goods, Lands and Tenements, whereof he is lawfully possessed, from violence, unlawfull moleftation or wrong; the first is of right, and by Law, and the fecond fort are all of Grace, faving one; and that the Kings Protection fo as it be under the Great Seal of England, as well moraturus as profecturus, upon any mans going or abiding in the Kings service, must be regularly to fome place out of the Realm of England, and that in some Actions, as in a Scire facias, upon Recoveries, Fines, Judgements, &c. In a Writ upon the Statute of Labourers, (although by the Statute made in the fecond year of the (w) Reign of King w 2 8. 6. Edward the 6th. cap. 15. and the Statute made in ca. 15. the 5th. year of the Reign of Queen Elizabeth, 5 Eliz. ca.4. cap. 4. no Protection is to be allowed ) and in a

Writ

Writ of Deceit, (notwithstanding the rule of Law is, that fraudi aut dolo Lex non patrocinatur, Deceit is not to be favoured ) a Protection doth lye: And that the Kings Protections are to be brought to the Courts of Justice where the Action is laid, be they Courts of Record or not of Record, and not to the Sheriff, or any other Officer or Minister; and are allowable not only unto men of full age, but within age, and for Counteffes and women, as nutrix, letrix, or obstetrix, Nurses of the Kings Children, the Midwife to the Queen, or Laundresses of the King or Queen. Protections do lye and have been allowed, where Essoines do not; and denyeth not but a man having a Protection Quia moraturus, and returning from beyond Sea only to provide Ammunition, Habiliments of War, Victuals, or other necessaries for the Kings service, and be arrested or imprisoned, he shall enjoy the benefit of his Protection; and denyeth not but that some Protections Quia nolumus, because we will not that he should be molested, may be granted by the King of grace, and gives his opinion that where it is pro negotiis regni, for the concern or business of the Kingdom, jura publica ante ferenda privatis, private mens actions are to give way or yield to the publick; and private mens Actions and Suits must be suspended for a convenient time, where it is pro bono publico, the Weal-publick, as certainly the necessary attendance of his Servants in ordinary, either for his honour, conveniency, health or fafety, do relate unto and concern the peoples good

good and fafety, the protection of their lives and estates, and the well being of themselves and their posterity, and all that can be dear or near unto them.

And fuch kind of Protections of Servants in ordinary or extraordinary, may be as confiftent with Law or Reason, as a Writ of Rege inconsulto, commanding a forbearance of proceedings in the case of one of the Kings Servants, arrested or profecuted at Law without leave first obtained, should not be awarded, as the Law and practice thereof is well contented to do it, where the King is in Reversion, or hath any Title to the thing or matter in demand, which may be done at the prayer or request of the party concerned, or of the Kings Councel, or ex officio Curia, by the Court it felf: and as well as the Justices allowed a Superfedeas to flay an Affise, where the Desendant was in the fervice of the King in his Wars beyond the Seas; or to flay Suits against divers Tenants in Northumberland, upon Writs of Ceffavit, to forfeit their Lands for non-payment of their Rents, and performing their services to their Lords, in regard of the then Wars with the (x) Scots, untill the War X 22 Aff. Pl. should be ended; or to fave a default of the Te-9. 6 25. mant or Defendant, and to adjourn the Suit or 19, 25. Action to another day; or where one is convict of rediffeifin, and (y) taken or arrested by a y 2 E. 4.16. Capias, the King commanded by his Privy Seal that no Process should iffue, and if any should iffue, that they (z) should surcease, and the Writ z 4 8. 4. 19. was thereupon staid.

Xxx

a 5 E. 3.

b 13 R. 2.

c 23 H. 6.

ca. 17.

ca. 6.

For furely had not fuch or the like Protections been heretofore accounted to have been as legal as they were warrantable and usual, there would not have been an Act of Parliament made in the 5th. year of the (a) Reign of King Edward the 3d. to forbid the allowance of them in Writs of Attaint against Jurors, or in Writs of Novel Diffeifin, and is the first Act of Parliament which did in any case absolutely deny the allowance of the Kings Protection; imitated and followed by the Act of Parliament made in the 13th. year of the (b) Reign of King Richard the 2d. to prohibit Protections in the case where upon a default of the particular Tenant in a real Action, he in the reversion is to be received to plead in a Suit commenced against him: and the Act of Parliament and Penal Law made in the 23th year of the (c) Reign of King Henry the 6th. against such of the Kings Purveyors as did take Provisions from the people without paying for them, and many an Act of Parliament and Penal Law from thence unto this prefent.

Which Protections or Tabula Tutelares, have been by Law, and may be granted for a reasonable time unto any of the Kings Debtors, untill the Kings Debt be paid, with liberty given to their Creditors to proceed in the mean time, but not to take out any Writs of Execution; or to some that in unruly and troublesome times obtained their salva Guardia, or Protection, propter quosdam Æ

d Register of mulos, where force or (d) incivilities were feared, writs, 281, or where upon sudden and unexpected Embargoes 282, 283. laid by a Foreign Prince, some English Merchants

Effate

Estate had been destroyed, or had their Ships or Goods taken at Sea by the Subjects of another Prince, and only defired a Protection from the many times Unchristian-like fury of their Creditors, untill by Letters of Reprifal or otherwise, they might enable themselves to make them a just fatisfaction; and did but in the mean time, like the innocent Doves, fly to the shelter of the Rock of their Soveraign, from the cruelty of the purfuing Hawk; or when any imployed in the fervice of the King, or for the good of the Nation, although he be at the present neither protected or priviledged, was by feigned or malicious Actions fought to be hindred or endamaged upon some reason or necessity; and in all or either of those kinds, have also been sparingly granted by King James, and King (harles the Martyr, unto some few particular men, as to Philip Burlamachi, and Pompeio Calandrini, Natives and Merchants of Italy, denizen'd and refident in England, who had imployed in their fervices not only at home, but in the parts beyond the Seas, in the important affairs of ayding the Kings Allyes, all the Estate and Credit which they had or could procure; fome if not many of which fort of Protections, have not been nor are unufual in our Neighbour Countreys, and in Brabant, adversus Creditorum multi juges, vexationes & assultus, to protect a Debtor against the cruelties, affaults and vexations of some unmercifull Creditors, quoties vel inclementia maris vel infortunio graviori demerfi ad certum tempus solvere non possunt, when by some great

Lovens

bantiæ &

great misfortunes by Sea or at Land, they are not at the present able to pay; whereof Hubert de e Hubert de Loyens in his Treatife (e) Curia Brabantiæ & munere Cancellaris ejusdem, of the Court of Bratractat, de bant, and the Office of the Chancellor of that Curia Bra-Province, gives the reason, quoniam Reipublica interest subditos non depauperari, sicut nec Principem, munere Cancellarii ejuf- cujus cum illis annexa caufa eft, because it concerns dem, 273, the Weal-publick not to suffer the people, nor 303 6 304 likewife the Prince, whose good or ill is annexed to theirs, to be impoverished; by which the poor Debtor obtains some respite, and time either to pay or pacific their enraged Creditors: a custom and usage conveyed to them by Antiquity, and deduced from the wisdom of the Grecians and Romans, in their well ordered Governments and Commonwealths.

> But those who might rest well satisfied with the wisdom as well as practice of our Laws, are fo unwilling to be undeceived, and to quit their stubborn ignorance and affected errors, as they will like fome Garrison willing to maintain a Fort, and hold out as long as they can, when they can no longer defend it, feek and hope to march out with better advantages in relinquishing or parting with it, then they could by keeping of it, and therefore will be willing to allow unto Strangers, or those which the King imployeth upon Foreign or Extraordinary occasions, and are not his Menial or Domestick Servants, the Priviledges aforefaid, fo as they may exclude those that are immediately attending upon his fervice,

fervice, or the greater concernments of his person.

## CHAP. IX.

That the Kings granting Protections under the Great Seal of England, to such as are his Servants in ordinary, for their Persons, Lands and Estate, when especially imployed by him into the parts beyond the Seas, or in England, or any other of his Dominions, out of his Palace or Virge thereof, or unto such as are not his Domesticks, or Servants in ordinary or extraordinary, when they are sent or imployed upon some of his negotiations, business or affairs, neisher is or can be any evidence or good argument that such only, and not the Kings Servants in ordinary, who had no Protections under the Great Seal of England, are to be protected or priviledged whilft they are busied in his Palace, or about his Person,

Which the men of Israel could so highly value, as they distinated King David from going in person with the Army against Absalom, saying, (f) thou shalt not go forth, for if \$12 Sam. 18 we she away they will not care for us, neither if half v. 3. of us dye will they care for us, but now thou art worth ten thousand of us; or as they shortly after said in their loyal contest with the men of Judah, (g) we g 2 Sam. 19. have ten parts (meaning the ten Tribes) in the v. 43. King: which just esteem caused Davids three mighty

mighty men or Worthies think they had cause enough to adventure their lives to break through the Host of the *Philistines*, and draw water out of h 2 Sam. 23. the Well of (h) Bethelem, to bring it to David to

v. 15.0-16. fatisfie but his thirst or longing to asswage it.

For if reason may be the guide, or hold the Ballance, and the cause be any thing of kin to the effect, the more worthy and the greater is to be more respected than the less, and the more neceffary, than that which is not fo much necessary; the heart and nobler parts, more than the inferior; and the person, health and welfare of the King, more than any Foreign Mellage or Imployment, or any private mans concerns in any particular affair; and that which is to be every day and night, and continually more to be taken care of, than that which is but accidental or temporary, or upon feldom occasions, for the falus populi cannot be suprema Lex, nor the good and safety of the people be maintained or provided for if the King who is the Law-giver, and by his Ministers and subordinate Magistrates the Laws executer, and the Laws and peoples protector and defender, be not so attended as he which is the Head and better part of the Body Politick may be kept and preserved in safety; and if Lex be summa ratio, the quintessence or chief of reason, and semper intendit rationem, alwayes intends that which is reason, we may not think it to be a paradox, or any stranger to reason, that the Persons and Estates of the Master of the Robes, the Gentlemen and Grooms of his Majesties Bed-Chamber, Gentlemen

Gentlemen of his Privy Chamber, Esquires of the Body, Physicians in ordinary, Gentlemen Ulbers, Gentlemen Pensioners, Teoman of the Robes, Gentlemen and Yeomen of his Guards, and those many other forts of Servants and Attendants. which are as the learned Caufabon terms them. servi ad manum, or de interioribus Aulicis, necellary Servants unto his person, and often and daily attendants upon him, or are otherwise necessary and becoming the Majesty of a King, as the Great Officers of State, Lord Chancellor, or Lord Keeper of the Great Seal of England, Lord Privy Seal, Lord Treasurer, Lord Chamberlains, the Lords of his most Honourable Privy Councel, Secretaries of Estate. Masters of Request, &c. being as Pasquier a learned joignantes a la tersonne de Prince, attending the Recherches, person of the King, and should neither be absent liure second,

(i) French Advocate saith, a la suitte le Roy & i Pasquier joignantes a la tersonne de Prince, attending the Recherches, person of the King, and should neither be absent liure second, or receive any impediment in their service, should chapitre 10. be as much or more protected and secured from the trouble of Law-Suits, or disgracefull Arrests, whilst they are busied about the King, or in his ordinary service, then those which are not his Servants in ordinary, but as Envoyes, Messengers or otherwise, shall be imployed upon seldom or

emergent affairs.

When Nehemiah's (k) Commission to rebuild k Nehem. 2. Jerusalem, and the Royal Protection of King Artaxerxes by his Letters Patents under his Great Seal, whilst he was busied therein, cannot conclude that in those Eastern Countries where Artaxerxes had such an Imperium despoticum, a large

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and absolute authority, and a people so reverential and obedient, that Nehemiah did not before his Journey, or after his return, enjoy the priviledge and freedom of one of the Kings Cup-bearers, and a daily and constant attendant upon his person; for it would be as illogical and unconcludent, as to argue or believe that a Kings Servant known to be one of his Servants in ordinary, without a Pass or Protection, is not to enjoy as much priviledge as when he hath a Pass or Protection, which can fignifie no more then that he is a Servant, or imployed as a Servant upon the Kings affairs, especially when the only ground and reason of his Protection, and upon which it is built or founded, was the Kings service; and it is not so much because it concerns the Weal-publick, which the words in the Kings Protection do not bear or intimate, but only in relation to the King and his fervice, and that the protected party is imployed or sent per praceptum Regis, or in obsequio Regis, by the Kings command, or upon his bufiness; for otherwise the subordinate business of the Offices of a Sheriff, or a Clerk to a Justice of Peace, being fomething appurtenant to the common good, might (which they never yet did) claim or demand a ceffation from Law-Suits, or a respite, as the Protections for men imployed in the Kings fervice have done; there being as great a diffance betwixt the reason and cause of the priviledge of the Kings Servants in ordinary, and their attendance upon his person and affairs relating thereunto, and that which is not immediately but re-

mote, as betwixt immediate and mediate, proximate and remote; nor can it be either truth or reason, that if the Abbot of (1) Burton upon Trent & Dugdales in the County of Stafford, had been imployed by Monasticon the King beyond the Seas, and being as he was Tom. 1. 275. none of the Kings Houshold Servants, such a Protection granted unto him whilft he was in the Kings fervice, could have bereaved him of the priviledge which King Edward the 4th. did grant unto him, his Covent, and Tenants, which were many, to be free ab omni vexatione Vicecomitis Staffordiæ, five eorum Satellitum in perpetuum. from all vexation and trouble of the Sheriff of the County of Stafford, or his Bayliffs or Catchpoles; or that if the Abbot of (m) Tavestoke in the m Dugdales County of Devon, had been fent as many Abbots Monasticon in those times used to be, upon any of the Kings Tom. 1.219. affairs into Foreign parts, and obtained the Kings Protection under the Great Seal of England, that he and his Servants or Tenants should not be molested or troubled during his absence, such an exemption for that small part of time, ought to have abridged him of that priviledge which King Henry the fecond granted to his Predecessors Abbots of Tavestoke, and his Successors, that he or any of his Monks should not be impleaded or fued at Law, nist coram Domino Rege, nist Dominus Rex nominatim praceperit, but before the King himself, unless the King should otherwise especially command or appoint it; or should not at his return have enjoyed the priviledge of a Baron, if he had held his Land by Barony, to have been only summoned Yy2 and

n Dogdales Gloffary in voce Abbas.

and liable to the Process at Law usually granted against Barons; or that if the (n) Prior of Spal-Monasticon ding in the County of Lincoln, had been com-Tom. 1. 130 manded to go into Scotland or Wales upon any of & Spelmans the Kings necessary occasions, and had been allowed a Protection under the Great Seal of England, to respite any Actions or Suits at Law in the mean time to be commenced or brought against himself, his Servants or Tenants, that could after that bufiness ended have debarred him of the priviledge of a Baron, or of one holding his Land per Baroniam, by Barony, to have been only fummoned and distrained according to the Process of the Law usually granted against Barons; or of that priviledge which K. Richard the first and K. John granted unto the Abbot of Spalding and his Succeffors, that none should implead them, their Servants or Tenants, de aliquo Tenemento suo, for any of their Lands or Tenements, nifi coram Rege, vel coram Capitali Justiciario suo, vel per speciale mandatum Demini Regis, unless it should be before the King, or his Chief Justice, (who then refided in the Kings Court ) or by the Kings special mandate; and amounted to no less then the priviledge as aforefaid claimed by the Kings Servants in ordinary, not to be arrested without license or leave first given by the King, or those Officers of his Houshold to whom it belongeth.

Nor can it be any thing but a paradox, and a very great enemy to reason, that obsequium & praceptum Regis, the Kings affairs and command, imploying Strangers and none of his Houshold Ser-

vants,

vants, as questionless the (0) Abbet of Miravall o Register of was not, who as appears by the Register of Writs, Wills, 18. had a Protection granted unto him whilft he was imployed in the Kings service in the parts beyond the Seas, should be allowed for a ground and foundation of a Protection, and available in the case of one that was not at all busied in a continual attendance upon his Perfon, or Houshold affairs, and be denyed his Servants in ordinary, who were a latere, alwayes imployed about him, or his more necessity, constant or durable affairs; and that it should be a causa cansati, cause of the effect or thing caused, in the protection of a Stranger imployed for fome few dayes or weeks in the Kings affairs, and not for those which were more near unto him, and daily conversant in his immediate and Domestick affairs, in whose care and fidelity his Sacred Person and the light and welfare of our Ifrael is entrusted; and that those that were not his Servants, should be in a better condition when they are imployed by him, and his menial and ordinary Servants in a worfe; and the same cause not operate at all in the case of his Servants in ordinary, who have more need of it, and be fo vigorous and effective for those that are Strangers, and have less need of it as to their persons, who being beyond the Seas, were out of the reach of any arrest or imprisonment, and as to their Lands and other Estates, might if they had not had the Kings Protection under the Great Seal of England, have defended any Actions by their Attorneys, or have been Essoined, or reversed any Utlary

quia ultra mare, because they were then beyond the Seas; or that if the King had fent beyond the Seas any of his Privy-Chamber, or Bed-Chamber, as hath been not feldom done by divers of our Kings and Princes, to some Foreign Prince or Potentate, for the greater credit of their Messages,

v. 15.

p Numb. 22. as (p) Balak King of Moab did, long before the World was gray, or heary headed, when after he had fent Meffengers unto the Prophet Balsam, and he refused to come unto him, he sent yet again Princes more Honourable then they; not thinking it fit or honourable to imploy any below stairs, or the inferior fort of their Houshold Servants, or their Barber, (as Lewis the 11th. of France did in his unfortunate Espargne or faving of charges, when he fent him as an Agent or Envoy to the great Inheretrix of Burgundy, and the 17. Netherland Provinces, which brought him a reproach and loss of those grand expectations, which he might otherwise probably have compassed, and saved millions of money, fome hundred thousand mens lives, and the trouble and disquiet of the greatest part of Christendom, in the fince seeking in vain to obtain those rich Countries by Conquest, which that Marriage and a more folemn Embaffy might have more easily gained) such Bed-Chamber man, or Gentleman of the Kings Privy-Chamber, should have the immunity or freedom not to be arrested or molested by reason of any Actions or Suits at Law whilst he was thus imployed, because it was per praceptum Regis, by the Kings command, & fuit in obsequio Regis, and was in his fervice,

fervice, and yet when he was come and returned to his place and attendance in the Kings Bed-Chamber or Privy-Chamber, where he did before daily officiate, and was in obsequio Regis, & per praceptum Regis, in the Kings fervice, (unless it could be then understood to be any either reafon or sence to believe, that he was not in the fervice of the King, or by his appointment, when if truth and reason might as they ought to do confort together, it was evident he was) must be arrested or imprisoned without the Kings leave or license, as if he were not of the Kings Bed-Chamber or Privy-Chamber, or any of the Kings Servants; or if the granting of a Protection by the King to an Earl, or any other of the Nobility, whilst he was imployed in his Wars or affairs, as many have been, in Foreign parts, should at his return into England be debarred of his priviledge not to be Utlawed or Arrested by Process or Writ of Capias; or that Ambassadors sent from hence unto Foreign Kings or Princes, without any Writ of Protection, which hath ever been though needless to be granted unto them, should not when they come home enjoy those Immunities and Priviledges were before their going or after their return appropriate and justly due unto them.

Or that the King may not with as great or greater reason, or cause of kindness unto himself and his Servants, as well grant his Writs of Proque Register of tection unto his Servants in ordinary, as he hath Writs, Tit. done unto some Strangers, or Foreign Merchants, Protection, or unto the (q) Prior of an Hospital, or some 281, 283.

other person, with a nolumus or command not to molest or permit to be troubled their persons, lands, goods or possessions, and a suscepimus in protectionem & defensionem, taking them into his desence or protection; or that the service or attendance of his Domesticks, or Servants in ordinary, either in relation to his person, or his affairs subservient thereunto which do concern him, and in him the Publick safety and welfare, should not claim a greater regard then other more remote.

And should heretofore be a Supersedeas to some of his Servants elected to serve for the people of their Country in Parliament, which with the House of Peers, and presence and authority of the King, makes it to be the Highest Court of Justice in the Kingdom, and next unto the King, who is the head, life, and being of it, their greatest and most darling concernment, far exceeding any or the most part of Imployments in the Kings extraordinary occasions either at home or abroad, which hath been the usual subject matters of the King Protections under the Great Seal of Englana, and not now be able or allowed to receive a just and fitting respect and priviledge in his more subordinate and ordinary Courts of Justice.

When as in the 7th. year of the Reign of King r Rot. Clauf. Richard the second, (r) James Barners being 7 R. 2. & elected a Member of Parliament, was discharged Elyngs and by the Kings Writ, and a new Writ caused to be tient pre-specific manner made for another election, quia est de retinentia of bolding Regis, & familiaris, & unus Militum Camera Regis, Parliaments, because he was of the Kings Retinue, one of his Houshold

Houshold Servants, and one of the Knights of his Chamber, attending in or near unto it; and in the same year Thomas Morvile was discharged of his election into the House of Commons in Parliament, which was superfeded quia est de retinentia charissima Domina & Matris nostra Johanna Principisse Wallia, for that he was in the service or retinue of his Mother the Princess of wales.

But that and all which hath been faid and evidenced, will it feems not yet be enough to remove the pride of heart of fuch as take a delight to arrest and imprison the Kings Servants and Attendants, without license or leave first granted, for Debts or other Actions to which they are entituled, or perswade them to abandon that unmannerliness, and an Objection which they have lately found out (as they think) to support it, That if the number of the Kings Servants were less, there would not be fo many to demand their Priviledges, or cause their Creditors to complain against them; and that if any of the Kings Servants in ordinary be fo without leave or license arrested or imprisoned, whereby the King should or might lose their service, he was to provide others in their places.

And that any of the Kings Servants in ordinary, waiting upon him by turns or courses, (for some of them do not) may without leave or license be arrested in the intervals of their waiting or attendance; which undutifull and uncivilized opinions, too near of kin to the Zz Principles

Principles of Wat Tyler and Jack Cade, and their Clownish Associates, might have been laid upon the Levelling Dunghill, and ought to be buried with their illiterate and ungodly Levelling Principles, which hath so long afflicted this Nation, and so greatly helped to ruine and undo the peace and happiness of it, the Adjutants or Authors whereof may upon a more sober and modest enquiry easily had.

CHAP.

## lan sega odi sa "vasa sa ora sekonaza adi dadi i . Č H A P. X. 100

That our Rings (some of which had more then his Majesty now hath) have or had no greater number of Servants in ordinary, then is or hath been necessary for their occasions, safety, well-being, state, honour, magnificence and Majesty; and that their Servants waiting in their turns or courses, are not without leave or license as aforesaid to be arrested in the intervals of their waiting or attendance.

Nd fubmit themselves and those their innovated formerly unheard of cavils and pretences, to the power of truth, and a conviction of those their great mistakings, if they shall but examine the necessity as well as the reason of it; for to a Soveraign Prince whose cares are to reach as far as his Monarchy, there cannot be in respect of the multitude and various forts of his daily and ever importuning affairs, in the behalf of himfelf and the Weal-publick, a few or small number to be imployed therein, if there were neither Honour nor Majesty to be heeded or supported, both which by an universal consent, Law, Custom, and usage of Nations, approved and subscribed anto by a general confent of the intellect and rational faculties of Mankind, should be not only the defire and joy of the people which are to be ruled and governed by them, but is a ready means, help and flay unto their welfare, peace and happiness, of: Zzz which

which the examples are as many, as the ages past and the people and Kingdoms of it: When Abraham although fometimes stiled a Prince, (but was no Soveraign (Prince) but a Sojourner in the Plain of (1) Mamre ) had 318 Servants to go f Gen. 12. 13, 14, 15. to Battel with him against his five Neighbour Kings, who had taken and spoiled his Brother Lot. David had together with the Princes and Rulers of the Tribes, great numbers of Officers, and Men of War, Officers of his Houshold, and (t) Servants therein and over his Estate, besides t I Chron. 26. 27, 28. the twelve Captains which as his Guards did in every month of the year by turns and courses attend him, and the fafety of his person, with four and twenty thousand fighting men. Solomon his Son had twelve great Officers in their feverally appointed Provinces, to provide Victuals for the King and his Houshold by courses, each man for his month, and made the Children of Ifrael to be u 1 Reg. 4. his men of War, and his Servants, and his (a) Princes, and his Captains, and Rulers of his Chariots and his; Horsemen, had a thousand and four hundred Chariots, and twelve thousand Horsemen; which declared the number of his Servants not to be small, petit, or inconfiderable : and were fo well ordered, as the Queen of Sheba with a great train coming! w 1 Reg. 9. from far to ( m) fee his Glory and his Court, 22. when the did behold the meat of his Table, the standing of his Servants, as the Margin notes it, the attendance of his Ministers, and their Apparel, and his Cup-bearers, fuffered under a Deliquium

and failing of her spirit; when he had such a state

and magnificence to accompany his Regal power, and so great a number of Servants to furnish out the glory and honour of his house and person. (x) Ahasuerus had seven Chamberlains, as Solomon v. 4, 615. had more then one Cup-bearer, and Efther had 16, 17, 18, feven ( ) Maidens allowed to her. The Western 19, 20. and Eaftern divided Empires of Romes, vaftly ex- y Efther 1. tended Conquests, glorying in their magnificence, v. 10. 6 had to adorn the honour and state of their Empe- ca. 2. rors, in their Houses and Palaces busied with multitudes of Civil affairs, their Scholas and Offices daily and hourly converfant in the attendance of their Persons, Houshold or Civil imployments; in every one of which, although Alexander Seve-Fus the Emperor did leffen and (2) contract them; z Lampriand ordained, no effent tot bomines in fingutis Offe dius in vita cis; quot neceffit as pofintaret, that there might be Alexandri in every Office or imployment, folmany Servants Severi. as necessity required; there wree of one and the fame fort feveral ranks and orders, amounting to as great a number as the Imperial port, flate and imployments might require, and could not be fmall, when they kept as we fay open houses to feed or refresh those great numbers which came either to honour or petition their Princes had fo many feveral Governours, Procurators and Sorp vants, and fo many feveral Houses and Palaces in their many Kingdoms and Provinces, and fometimes made and fet out to many Epula and publick Feafts, and many thousand Tables of them ar one time to entertain comfort or pleafeithe people; and to any that shall read the claborate and learned

ani Pancirol-Lus notitia w domes Augufte.

b Hinckmarus Tomo po. Reriori, Epift. 14, 17, 24, O 25-11

a Cuiacius learned Comment of (a) Cuiacius upon the roth. Comment lib. 11th and 12th. Codes or Books of Fustinian Panci-10, 11, 12. rollus notitia utrinfa; Imperii, and the laborious and Coil. Justini learned Book of Jacobus Gutherius, of the various Offices and kinds of Services as well private as tringue In publick, in the Houses and Palaces of the antient perit. Guthe- Emperors, will not appear to be much if at all

rius de Offic. Supernumerary.

Charlemaigne the Great King of France and Emperor of Rome, as Hinckmarus Archbishop of Remes writeth, who in the latter end of his Reign (b) lived and was bred up in his Court, had his several Servants, and took a more then ordinary care pro honestate Palatii en Regati Ornamento, for the honour of his House of Palace, and his Royal Ornaments, fingulis quibafque quotidianis necessitatibud occurrentibus, every one in their flation performing their feveral Offices; and the Constitution of his house so laudable, as multitudo congrua fine qua rationabiliter & honeste effe non poffit, fuch a competent number or multitude was necessary, in regard that otherwife the business of the Houfhold or Palace would not be rationally or honourable done; and care was to be taken, ut femper effet opnatum Pularium & Confiliarits condignis nunquamidefficusion effet, thatche honour of the Kings house might be preserved, and never want the add vice and help of worthy Affiftants; and where he speaks of the number of Huntsmen and Falconers. and their conftant attendance within or without the Court faith, Senfasin his omnibus talis erus we hunguam Patatio tales wel tanti deeffent ministri, that armed

that the meaning was, that there should never want fuch or the like Servants: And imparts to us a further reason of such a number of Servants attending the Courts of Princes in those heroick times, ut ex quacunque parte totius regni quicunque desolatus, orbatus, alieno are oppressus injusta calumnia cujusque suffocatus, seu cetera his fimilia, maxime tamen de Viduis & Orphanis unuscujusque secundum suamindigentiam vel qualitatem; Dominorum vero misericordiam & pietatem semper ad manum haberet, per quem finguli ad pias aures Principis perferre potnissent, that from all parts of the Kingdom whoever was distressed, afflicted, endebted, or unjustly accused, or the like, especially Widdows and Orphans, might according to their feveral necessities and qualities have some at hand to procure the mercy and piety of their Lords or Masters, whereby every ones Petition or Complaint might come linto the gracious ears of the Prince.

King Elfred or Alured who reigned here in the year of Christ 856. had in his Court a great and Princely attendance of Bishops, Earls and Nobility, Knights and Esquires, and three (s) Troops c Asser Meof Souldiers for the Guards of his Palace, (as if neventis de he had an intention somewhat to imitate David gestis Althe King of Israel and Juda) tanquam attentions, fredi, 20. seu exemplar, as a great and antient example worthy to be imitated, whereof one waiting by the space of a month, menseque finito & adveniente alia prima domum redibat, which being ended that returning home, another succeeded the other two, propriis quivis necessitations studentes commoraban-

tur, being busied about their own affairs, tarried in the meantime at home; secunda itaque cohors mense peracto adveniente tertia damum redibat, and the fecond Troop baving ferved their month, the third came into their places; and the thirds course or time alotted being ended, the first returned to his former attendance : Et hoc ordine omnibus vita prasentis temporibus talium viciffitudinum in Regali Curta rotatur administratio, and in this manner all the life time of the faid King, and by fuch changes or courses was the service in his Royal Court administred. And certainly no small number of Officers and Servants were heretofore thought to be fufficient in England to attend on our Kings and Princes, when Hardi-Canutus King of England furnished Tables of meat for his Servants and all comers four times a day; when Thomas Earl of Lancaster, who was an Attendant himself upon the King, had in the Reign of King Edward the second, a Bishop and Barons officiating in his house, 100 Knights and as many Esquires, besides Officers and common Servants; Bishops, Earls and Lords in after ages rode and travelled with great Trains and Retinues: Nicholas West Bishop of Ely in the Reign of King d Stows Sur- Henry the 8th. had (d) continually in his house vey of Lon- 200 Servants; Edward Earl of Darby 200 men in Checque-Roll, in the Reign of Queen Elizabeth; and John Earl of Oxford, although a welldeferving Ancestor of his that led the Vantguard of King Henry the 7th. at the Battel of Bolworthfield, was in that Kings after Haleyon dayes fined

don, 134, 135, 138, 139.

in a then great fam of money for attending him at his house with a very great Retinue, did usually ride from his house in Effex to his house at London-Stone in London, with 80 Gentlemen in Livery of Red or Tawny, with Chains of Gold about their necks, and 100 tall Yeomen in the like Livery to follow him without Chains, but all wearing his Crest of the blew Boar embroydered on their lest armes, or shoulders; so as in the difference betwixt the Majesty of a great and Soveraign Prince, being as the Sun in our Firmament, and the grandeur which his Nobility as the Stars in their leffer lights derived from it, either did or should endeayour to support the measure or rule of proportion, may evidence how necessary it is for a King to have an honourable and competent number of Servants, when those that were so much inferior to the Majesty, Power and Soveraignty of a free Prince, could in their leffer Orbs not want a fitting number to attend upon the Honours which he or some of his Ancestors gave them; when as by an Order of his late Majesty in the year of our Lord 1626. 40 Messengers of his Chambers were at all times to be ready to do his Majesty service; and at all entertainments and receptions of Ambaffadors, many of the Gentlemen of the Kings Privy Chamber are commanded to attend fuch of the Nobility as are appointed by the King to receive and conduct the Ambassadors unto him, in so much as in the year 1636. eight Gentlemen of the Kings Privy Chamber were appointed to attend the Earl of Lindsey, to bring the King of Aaa Polands:

Polands Ambassador to Hampton-Court; and fuch

multitudes and variety of cares and business which do attenda King, and the consequences and grand concernments thereof, so hugely different from any of their Nobility or Subjects may perswade us e I Sam. ca. to allow our (e) Saul to be as well in the number of their Houshold Servants, as in all other things, higher from the (houlders upwards than all or any of them; and will better become him, than those many which our murmurers were fo well content to afford their Oliver the Protector of their intended flavery, when by his Instrument fo called of his Usurped Government, he was to have two hundred thousand pounds per annum, for defraying the necessary charges of the administration of Justice, and other expences of the Government, besides all the Kings Revenue which was left unfold, being a confiderable part thereof, with the Fines, Amerciaments, and casual profits of the basely misused and despoiled Crown of England, and a pay and conftant yearly maintenance of Ten Thousand Horse and Dragoons, and Twenty Thousand Foot in England, Scotland and Ireland, with a fetled yearly Revenue for the maintenance of a convenient number of Ships for guarding of the Seas, allowed unto him; had his Chamberlain, Treasurer, and Comptroller of a Cromwells better house than the Brew-house which he could not thrive in at Huntington, his mis-called Lords of his Privy Counsel, Commissioners of his Great Seal, Secretary of State, his Turn-coat Heralds. cemb. 1653. Serjeants at (f) Armes, Messengers of his Chamber,

f Oliver Instrument of Government made 16th. of De-

10.

ber, Ushers, and many other Servants and Officers belonging to his Counterfeit Highness, and his Envoys and Ambassadors, one of which could not be dressed out or sent with a lesser state and magnificence than 200 Attendants.

And the Lord Mayor of London, being but a temporary and yearly Governour of that City, and one of the leffer rayes of the Majesty of our Kings. communicated to that annual Magistracy under them, can be allowed for his state a Recorder, Common Serjeant, Chamberlain, Town Clerk. Coroner, Sword-Bearer, Marthall, Common Hunt, Common Cryer, Water-Bayliff, and Under-Chamberlain, four Clerks of his Mayors Court, three Serjeant Carvers, as many Serjeants of the Chamber, a Serjeant and Yeoman of the Channel, four Yeomen of the Water-fide, an Under Water-Bayliff, two Yeomen of the Chamber, three Meal-Weighers, two Yeomen of the Wood-Wharfs, the Sword-Bearers man, the Common Hunts two men, the Common Cryers man, the Water-Bayliffs two men, and the Carvers man, some of which feveral Officers or Attendants do wait by turns or courses; and hath one of the Kings Maces or Serjeant at Armes at some certain times of Solempnity attending upon him, a refemblance of a House of Peers in his Court of Aldermen. where the Recorder is the Prolocutor, and a House of Commons in his Common Counsel, both which upon occasions he calls and adjourns at his pleasure, hath his Court of Conscience like a Chancery for equity, and feveral Courts of Ju-Asaz

flice; and when he goeth with above 60 Companies of all Trades, in a kind of triumph of their Trade and Mysteries, to take his Oath before the Barons of the Exchequer, hath all the worship and attendance which his Towns-men or Citizens can help him unto, every one of which Companies of Trade having some 20, some 45, some 120 Livery men, some in their Gowns of Budge, and others with Foines, who at 20 or 28 1. a piece are willing to purchase a share of preheminence in the rule and ill ordering (instead of better) of their feveral Fraternities of Deceipts, together with their Whiflers, Marshals-men, Beadels, and many other Attendants upon that and all other times of Solempnity, to furnish out the magnificence of the City.

Nor should the number of the Kings Servants, which the 19. undutifull Propositions, and all other the unreasonable restrictions and conditions endeavoured by the late Rebellion to be imposed upon our late blessed King and Martyr, did not seek to restrain or limit, be thought to be too many by the addition of some extraordinaries.

CHAP.

## CHAP. XI.

That the King being not to be limited to a number of his Servants in Ordinary, is not in so great a variety of affairs and contingencies wherein the publick may be concerned, to be restrained to any certain number of such as he shall admit to be his Servants Extraordinary.

7 Hen as there are many times as great a necessity of them, as of those in Ordinary, either as to fervice or state, the honouring of persons well accomplish'd for services formerly done, or likely to deferve it, or the retaining of them near unto the King in a dependency upon him, or as it were alletti or proximi, as many of the Roman Emperors Servants Extraordinary were, in reversion for special uses or service, when time or occasion should call for it; and the Grecian and Roman Western and Eastern Emperors, in imitation probably of those customs and usages of the Hebrews, who were more participant of the light and emanations of the Divine Wisdom, did fo separate those which had once been imployed in their fervice, from their other Subjects, as they would not dismiss them where age or other impediments, not their own default or offences, did occasion it, without some mark of honour, dependency, or retaining of them, but did ordain an Ordo Dignitatum, several degrees or respects to be given unto them, with a sitque plane Sacrilegii

g Cuiacius ad lib. -12. Cod. Justipiani tit. 8.

they that offended therein should be accompted guilty of Sacriledge: The first degree being, 1. For those which were in Ordinary. 2. For Extraordinaries, or such as deserved to be honoured. 3. (g) For such as did not wait, but were absent. 4. For such as had those titles or honour given them by certain Letters Patents or Codicils, and were therefore called Honorarii: it being not unusual in those antient Registers of reason the Books or Volumes of the Civil Law. to find the Curiales, Courtiers or Servants of the Prince, stiled Milites Palatini, and the Doctors and Advocates Milites literati, contradiffind unto the Milites Armati, a more proper kind of Souldiers or men at Armes guarding or attending upon the person of the Prince; and the Supernumerarii, Proximi vacantes, (a title borrowed from the customs of warfare) and Honorarii, being as it were Extraordinaries, as they are at this day in the Empire of Germany, France, and other Countries and places, and have been allowed the fame priviledges with the Princes Servants in actu or agentes, in ordinary, as to be free from Purveyance, lodging of Strangers, all Parish and Country

h Idem ibid. Offices, & ab omnibus sordidis (h) muneribus, all tit. 9. 1. tit imployments in the Commonwealth, not becoming 29.2. & tit the honour of the service of the Prince; & ut lege 49.2. vetustissima subjaceant Jurisdictioni Magistri Officiorum, they should be under the Jurisdiction of the

Lord Steward of the Houshold, and not be enforced to appear in the subordinate Courts of Ju-

flice;

flice; and those priviledges were retained post depositam administrationem, after the quitting of their fervices, offices or places; and the reason given, ne sordidis astricti muneribus decus ministeris quod militando videbantur adepti otis tempore & quietis amittant, left that being afterwards put upon inferiour offices and imployments, they should lose the honour they had gained in the fervice of their Prince: From which the laudable care of our King Henry the 8th. did not deviate, when in the 17th, year of his (i) Reign he did by advice of i Statutes & his Privy Counfel ordain, That such of his Ser-Orders made vants as should be found to be impotent, sickly, un- at Eltham, able or unmeet to occupy their places, the King of his An. 17H.S. gracious disposition being not willing that any of his old Servants (bould be rejected & left without some competent being, unless their demerits (bould so require, did order that some convenient entertainment bould be assigned for every one of them towards their being, and to be discharged from attendance in his Housbold. and other able, meet, honest and sufficient persons put in their places, which entertainments upon the death of every or any the persons discharged, shall cease.

And for such of the reomen of the Guard which shall be discharged, the Kings Grace is contented to make them reomen of the Crown, and in consideration of their service, that such of them as have none Offices of his Grace to the value of two pence by the day, shall have the wages of six pence by the day uncheque. So as the reason being the same, and since by a common and customary usage in the Courts of Princes arrived to a jus gentium, or Law

of Nations, it may from thence and the Civil Law with warrant and authority sufficient be truly affirmed, that much of our method and courses of Parliaments, Feudal Laws, Tenures, Great Offices of the Crown, Grand Serjeanties, Priviledges of the Kings Servants, Honours and respects due to Majesty, rules of Honour, Precedency and Dignities, as well within our Kings and Princes Courts as without, our Military and Civil Orders and Government, and many of the proceedings in our Courts of Justice, and the (4) Latine part and

k Vizzanius Courts of Justice, and the (1) Latine part and l. 1. de man-fuperintendency of our High Court of Chancery, datis Princi- in granting of our Kings Rescripts and Writs repum. 1. set. medial to prevent a failer of Justice, have had de vet. Far. their patterns and originals, well approved by emol. 1. 1. ff. right reason and our Common Laws and reasons.

de constitut. sonable Customs.

Frincip.

By directions of which Law of Nations, and the Civil Law, (from whence our Common Laws have borrowed many a maxim, and much of their excellency and reason) our late blessed Martyr King Charles the First, as many of his Royal Progenitors and Predecessors had done before him, did sometimes as his occasions or affairs perswaded him, admit some to be sworn his Chaplains extraordinary, where the worth or budding eminency of some Divines or Students in Theology attracted his eye or intentions to preserve or take them nearer to himself, to be his Chaplains in ordinary upon the next avoidance or vacancy, or otherwise to preserve them in some Church, Office or Dignity, as in the year 1628. Doctor Micleth-

waite

maite Master of the Temple, and an eminent Preacher; Doctor Samuel Ward, a man more then he should have been averse to the Discipline of the Church of England; Peter Heylin a well deferving Divine, and dutifull Son of the Church : in the year 1632. the learned Robert Saunderson Batchelor of Divinity, afterwards Bishop of Lincoln, and a great light of the Church; Ralph Brownigge Doctor of Divinity, afterwards Bishop of Exeter, fworn in the year 1638. one of his Majesties Chaplains Extraordinary; and in Anno 1630. Herbert Croft Batchelor of Divinity, now Bilhop of Hereford; and did not refuse divers of the Sons of the Nobility, who fought to partake of the honour of accels unto his Majesty, and the more select rooms of State in his Court, ( which in that of the Kings of Spain is not thought fit to be communicated but to some of their especial Attendants ) to be fworn Gentlemen Extraordinary of his Privy-Chamber, as in the year 1631. the Lord Matravers eldest Son to Thomas Earl of Arundel and Surrey, and Sir William Howard Knight of the Bath, now Viscount Stafford, his Brother; and in the year 1638. the Earl of Kildare the first Earl of Ireland, who could not be blamed for their inclinations or tendency to the center of Honour, when as long before the Conquest or fatal period of our Saxon Ancestors, King

Alfred had many of the (1) Sons of the Nobility I Affer Meeducated and brought up in his Court; and that neven is de noble and well becoming custom received and met rebus gestis with in many ages after so great an encourage-Alfredi.

Bbb ment,

Shinuov

ment, as the young Lords or Nobility had a confant Table or dyet in the Court, untill in the Reign of King Edward the 6th. the perswasions of a needless and unhappy parsimony did put an end to that part of the Royal munificence, which King Henry the 3d. in some hundred years before would not in his greatest wants of daily necessaries, occasioned by some of his unruly Barons, when he took such relief as fome Abbeys would afford him, quit that part of the honour of his Court or Houshold; nor did our late King of bleffed memory, deny the like honour of his Privy-Chamber to divers Gentlemen of note or great effeem in their Countries, as Sir Arthur Capel Knight, afterwards Lord Capel, that heroick and loyal Martyr for his King, and the Fifth Commandment of his Heavenly King, charged upon all Mankind in the Decalogue, Sir Thomas Richardson Knight, Son of Sir Thomas Richardson Knight, Lord Chief Justice of the Court of Kings-Bench, or Sir Thomas Roe Knight, a learned and well experienced Embassador to the Mogor or Mogull, that great Prince in the East-Indies, and to feveral States and Kingdoms in Christendom; Sir Fulk Hunkes Knight, and Sir Ferdinando Knightley Knight, two well experienced Commanders in the English Regiments in the Netherlands or United Provinces, Sir Edward Dearing Knight, one of the Members of the Houle of Commons in Parliament in the year 1641. and unto Sir william Waller Knight, who afterwards bitterly repented the vain-glory of being a Conqueror of some of his Soveraigns Forces, endeavouring

vouring to defend him and their Laws and Liberties in the late Rebellion, and to some others who could afterwards stain their formerly more loval Families in that horrid Rebellion, and imploy their time and Estates against their King which had fo much honoured them; or to admit into his service as a Servant Extraordinary Edmond Cooper a Drummer, John Houghton a Chirurgeon, or some excellent Picture-drawer, as the famous Sir Anthony van Dike, or some Foreign curious Engineer, Gunsmith, or other excelling Artificers, who without some such encouragements would not have benefited our Nation with their skill and refidence; and was in that Prince of bleffed memory, and will be in our gracious Soveraign no less allowable than it was in King David, to take into his Family as an Extraordinary, when his affection and gratitude prompted him unto it, (m) Chimham the fon of the good old Bar Zillai, m 2 Sam. 19.

when many of the Yeomanry of England have be- v. 37, 38. fides their Servants in ordinary, some that are as

extraordinary, and work a great part of the year with them.

And the Nobility and Gentry of England (fince their restraint of giving Liveries by several Acts of Parliament, to prevent the too freequent use of that in making of parties and sactions, in one of which, viz. that of the first and second year of the Reign of King Henry the 4th. cap. 21. it is provided, as hath been mentioned, That the King may give his Honourable Livery to his menial Knights and Esquires, and also to his Knights and Esquires of his Bbb 2

retinue, who are not to use it in their Counties; but in the Kings presence, and the Prince and the Nobility coming unto the Court and returning from thence. were specially excepted ) are not at this day de. barred the moderate use of Liveries, or some as extraordinary Servants to be imployed upon feveral occasions, to retain unto them; as the Lord Mayor of London is not without the attendance of Liverymen of the Companies or Fraternities of Trade, or fuch as he shall felect out of them, in some grand Solemnities, as the meeting or welcoming of the King to his City or Chamber of London, at his return from a Progress, or from Scotland, to conduct into the City a Ruffian or Persian Embassador, and it hath been ever accounted to be a Royal or honourable way of Espargne to have some to be extraordinary Servants, without the charge of Bouche of Court, or annual falaries, to be alwayes in readiness at grand festivals or occasions; and those Citizens of London, and men of the Mysteries of gain and Trade, who have aggrandized their Credits and Estates by the Sun-shine and warmth of the refidence of the King and his Courts of Justice, can when a little before they could bufie themselves in needless murmurs and complaints against the Priviledges of the Kings Servants in ordinary and extraordinary, think themselves to be no mean men in their Parishes and Companies, if they can procure the favour to be admitted the Kings Servants extraordinary, as he shall have occasion to be cozened in such Mapufactures or Wares as their Trades afford, in fo much

much as it is become the preferment and ambition of one of every Trade, great or little, ( fome few only excepted) in the City of London, to be entituled to be the Kings Servant, as the Kings Grocer, Brewer, Apothecary, Mercer, Draper, Silkman, Taylor, Printer, Stationer, Bookfeller, Girdler, (a Trade now altogether disused) Shoomaker, Spurrier, &c. and are well contented to enjoy all the Priviledges appertaining to the Kings. Servants, as not to bear Offices in their Parishes or Custard-cram'd Companies, and not to be arrefted without licence. And their Wives swelling into a tympany of Pride, will be apt enough to think their former place and reputation too far beneath them, and not let their Husbands purse have any rest or quiet untill they can be fine: enough to go to the Court, and fee the Lords and Ladies their Husbands fellow Servants: And they which cannot attain to that honour to be fuch a Servant of the Kings extraordinary, for they cannot be truly faid to be anything more than the Kings Servants extraordinary, when as he as to many of them hath no daily, or but a feldom and occasional use of them, and where he hath most it is not constantly or often, do think it to be worth the utmost of their endeavours to obtain the honour and priviledge of being the Queens Tradefmen or Servants extraordinary: And therefore: the King having fewer Servants or Officers in ordinary, than the Kings of France his Neighbours used to have, who besides their numerous Guard; have, four Kings at Armes, eight Masters of Requeft,

(374)

quest, deux Maistres d'Hostel, two Masters of the Houshold, thirteen Pages of Honour, and two hundred Gentlemen Pensioners, &c. and a far lesser number than many of his Royal Progenitors, should not now be thought to have too many

because he hath some extraordinary.

And although it is not hard or difficult to believe, but that heretofore the Common people of England were fometimes troubled at the unruliness and misdoings of the Purveyors, (which were afterwards well prevented in the Reign of Q. Elizabeth. by a Composition made with the several Counties. what proportions of Provisions the City of London and every County should by equal charge and collection pay and deliver towards the support and maintenance of the Provision for the Kings Houfhold) yet notwithstanding they did in their duty and reverence unto the King, and respect unto his Servants, not think it reasonable or comely to arrest or trouble his Purveyors or Servants by any Arrest or Actions, without asking his seave or licence.

But where they had any grievance by his Officers and Servants, and the Laws in force would have given them their Actions and remedies, were so unwilling to make use of those ordinary helps which the Laws were at all times ready to afford them, as they would rather trouble the Commons in Parliament to petition in their behalf for a redress therein, who could not but understand that where an Act of Parliament gives remedies either against the Kings Servants, Barons, Bishops, or others,

others, it is to be more aut eursu solito, in such wayes and manner, if no other in particular be prescribed, as the Laws and reasonable Customs of England will allow, and not otherwise. A prospect whereof, and of our Kings of Englands care to protect their Servants in their Liberties and Priviledges, as well as to do Justice unto the rest of their Subjects complaining of them in Parliament, needs not be far to seek to those that will but retrospect and enquire into the ages past.

## CHAP. XII.

That the Subjects of England had heretofore such a regard of the King and his Servants, as not to bring or commence their Actions where the Law allowed them, against such of his Servants which had grieved or injured them, without a remedy first petitioned for in Parliament.

Hen in the 13th. year of the (n) Reign 13 E. 3.

of King Edward the third, the Commons Rot. Parl ma.

petitioning the King in Parliament, (which they 14, 6 15.

needed not to have done, when the Law would have given them remedy without the trouble of petitioning the King in Parliament, and they might by the Statute made in the 28th. year of

(1) King Edward the first, have pursued them as 0.28 E. 12.

Felons) That all Purveyors as well with Commissional Commission as without, might be arrested if they make not present pay. All that was answered unto it,

(as if there were altogether an unwillingness to expose them to Arrests, and with which the Commons seemed to be satisfied) was, That the Commissioners of Sir William Healingsord and all other Commissioners for Purveyance for the King be utterly void.

P20 E. 3. In the 20th, year of that (p) Kings Reign, the Rot. Parl. m. Commons in Parliament petitioning, That payment be made for the last taking of Victuals: The Kings answer was, That order should be taken

Parliament petitioning the King, That Purveyors not taking the Constables with them, according to the Statutes of Westminster, might be taken as Thieves, and that the Judges of Assie or Justices of the Feace might enquire of the same: The King only answered, That the Statutes made should be observed

In the 21th. year of the faid (r) Kings Reign, r 21 E. 3. Rot. Parl. m. the Commons in Parliament not thinking it fitting that the Purveyors who did them wrong 22. should be instantly laid hold of, or troubled with Suits or Actions, or the King and Queens Horses impounded, which would be a less affront to Majefty than the arresting of his Servants, did only petition, That whereas the King and Queens Horses being carried from place to place in some Counties, had Purveyance of Hay and Oats, &c. made for them; That the faid Horses might abide in some certain place of the Country, and provision made for them there in convenient times of the year by agreement with the Owners of those Goods, and that inquiry

quiry might be made of the ill behaviour of those Takers before that time, and that by Commissions the Plaintiss or party grieved in that kind, as well of wrongs heretofore done or hereaster to be done, might have redress therein.

To which the King answered, That he was well pleased that the Ordinances already made should be kept, and Purveyance made for his best profit, and

ease of his people.

And in the fame year the Commons having complained, That whereas the King and his Councell had affented, that Men and Horses of the Kings Housbold should not be Harbinged but by Bill of the Marshal of the House delivered to the Constable, who Bould cause them to have good sustenance for themselves and their Horses as should be meet, and before their departures (bould pay the parties of whom the Victuals were taken, and if they did not, their Horses (bould be arrested, and that contrary thereunto they departed without payment: ( when it feems they used so much civility to the Horses as not to arrest them ) did only pray, that in every Bill mention be made of the number of Horses, that no more but one Garfon be allowed, and that payment according to the Statute might be made from day to day. Whereunto the King answered, That that Article (bould be kept in all points according to the form of the Statute.

In the 28th. year of the (f) Reign of that f Rot. Parl. King, by an Act of Parliament not printed, when 28 E. 3. m. it was enacted, That no Purveyor arrested for any 34-missemeanor should have any Privy Seal to can'e such

as arrested him to come before the Councell to answer to the King, ( when it feems the King and his Councell were unwilling to put the Kings Servants under the command of every mans pretended Action) but the party grieved might have his remedy by the Common Law; the utmost extent of that Statute did not include any other of the Kings Servants then his Purveyors.

Rot. Parl.

44.

And did so little difrelish (t) Protections, and the just grounds and reason thereof, as in the 45 E. 2. 11. 45th. year of the Reign of King Edward the third, the Commons in Parliament petitioned the King, That such as remained upon the Sea-Coasts by the Kings commandment, might have protection with the Claufa volumus; which the King supposing to be too general, or at that time unnecessary, answered, That the same would be to the apparent loss of the Commons.

In the 46th. year of the ( #) Reign of that n 46 E. 3. Rot. Parl.m. King, the Commons petitioning the King in Par-2 %. liament, That whereas it was granted that no Purveyance be but where payment is made at the taking, that it would please him that that Ordinance be

holden as it was granted.

The King doth not in express terms answer. that the party should take his course at Law, but only, That it pleaseth the King that he that findeth himself grieved shall pursue it, and right shall be done nnto him.

w Ret. Parl. In the 47th. year of the (w) Reign of King 47 E. 3. m. Edward the third, the Commons did in Parliament (although the Statute made not long be-23. fore

fore in the 36th. year of his Reign, cap. 2. gave them sufficient remedy and power to resist) petition the King, That the Statute made whereby bnyers for the Kings Housboad should pay readily should stand, and that no man be impeached for resisting them therein.

To which the King answered, The Statute therefore provided shall be kept, and who will com-

plain (ball be heard.

In the 50th, year of the (x) Reign of the said x Roc. Parl.

King Edward the third, the Commons in Parlia-50 8.3.m.
ment did petition the King, That the Clarks of the 77Market for the Kings Houshold (when as the Common Law, and the Statutes of 9 H. 3. cap. 26. and
14 E. 3. cap. 12. had before given them sufficient
remedy against Clarks of the Market ) should not
by extertion take Fines in grass or certain of any
Towns, but that there might be appointed a certainty
of weights and measures according to the Standard
and Statutes thereof made: The King answered,
That he would be thereof advised.

In the same (7) Parliament the Commons (al-y Rev. Perthough the Common Law and the Statutes made 50 E. 3 min the 28th, years of the Reign of King Edward 31, 102 the first, and the 5th, and 10th, years of the Reign of King Edward the third, had provided sufficient 10 E. 3. 6.1. 6.2 remedies) did complain against the Court of the 2, 6.3. Marshalfea; to which the King answered, he would charge the steward and Officers to make

redrefs.

And in the (z) Parliament aforefaid petitioning 7 Ker. Parl. the King, That by Protestions cum clause Volumes 10 E. 3. 11.

many men were undone, and praying that one made to Jacob Jacomino, a Lombard, might be repealed, and no such hereafter granted: The King answered, That upon examination of such had by the Councell, it should if need be repealed. And in the year next following, petitioning the King in Parameters.

a Rot. Parl. ment, That (a) the Protections of such as did sye at 51 E. 3. m. Calais, or about Picardy, only to delay such as did sue them, might be repealed, and no such from thence granted: The King answered, That if his Councell should be informed of such covin, it should be re-

dreffed.

And the Commons in Parliament in the fame b 51 E. 3. year of the (b) Reign of that King, though by a Rot. Parl.m. Statute made in the third year of the Reign of 3 E. I. c. 28. King Edward the first, cap. 28. a Statute made in 28E.1.c.11. the 28th. year of the faid King, cap. 11. a Statute I E. 3. c. 14 made in the first year of the Reign of King Ed-4 E. 3. c. 11. ward the third, cap. 14. another in the 4th. year of 20 E.3. c.4. the Reign of the aforefaid King, cap. 11. a Statute made in the 20th. year of the faid King, cap. 4. remedies were for the same provided, and there were divers Writs framed in the Register and to be thereupon had of course, petitioning the King, That none of his Officers be maintainers of any quarrels ( which the faid Statutes did severely prohibit ) in the Countries, on pain to lose their Offices, and to answer double to the party grieved: The King answered, That he had forbidden his Officers so to do, and if any be grieved he should be heard.

And in the same year, when they had remedy given them by the Law against any the unjust

dealing

dealing of Purveyors, did petition the King, That the Statutes made be not repealed but by affent of Parliament, and that the Statute of Purveyance might be executed: To which the King answered, they cannot; and that for the Purveyors the Law made

(bould stand.

In the first year of the (c) Reign of King Richard c 1 R. 2. Rot. the second, the Commons (when there were Laws Parl m 64. in force which might have saved them that trouble) did petition the King in Parliament, That no Officers of the Exchequer, or of the Kings Houshold, do maintain any quarrels in their Countries, and that the priviledge of the Exchequer might be declared. To which the King answered, touching maintenance, order is before taken; and for further declaration it hath been used, that all Officers of the Exchequer and Servants with them abiding, should in all personal Actions be sued and sue in the Exchequer, and not elsewhere.

In the same (d) Parliament the Commons peti-d 1 R.2. Rot. tioning the King, That the Jurisdiction of the Mar-Parl. m. 65. shalfea (which is a Court greatly concerning the Kings Houshold) might be limited, and that all men might have their Liberties allowed as well within the Virge as without; and that no Court of Antient Demessne be thereby disturbed: The King answered, The Marshalfea shall have such Jurisdiction as heretofore, and who will complain shall be

heard.

And petitioning also the King in Parliament, That every man might upon the Kings Protections averre that the party was not in the Kings service according according to the furmife of his Protection; The King answered, That an Averment lay not in such cafes.

In the fame Payliament the Citizens of London e Res. Parl thinking to adde (e) unto their heaps of Liberties more then was fitting, or right reason could grant them, did with much partiality petition the King, That no Protection Royal might be allowed in Debt, Accompt, or Trefass, wherein a Freeman of London Should be Plaintiff. Unto which as to f Rot. Part (f) Victuals bought after the voyage or service

1 R. 2. m. whereof the Protection mentioneth, or for Debt or Contract after the date of such Protection purchased, the King granted and it was enacted accor-

dingly.

97.

133.

In the third year of the Reign of that King, ( when but the year before the hindring and delaying of men in the pursuit and recovery of their just Debts, was in the Parliament of the second year of that King, in the case of Robert de Hanyley, purfued upon an arrest in an Action of Debt, and flain at the High Altar in Westminster Abbey, being then a Sanctuary to which he fled, declared before the King in Parliament to be a grievous fin,

g Ret. Parl. the Judges and (e) Lawyers of the Land, and the 2 R. 2. parte Doctors of Divinity, Canon and Civil Law affentprima. ing thereunto: And the Doctors of Divinity, Canon and Civil Law, upon grave and well advised deliberation, delivering upon Oath their opinions, That in case of Debt, Accompt, or Trespass, where life or member was not in question, no Sanctuary or Immunity of Holy Church ought to be allowed:

allowed; and in high expressions further said, que Dieu Salvez Sa perfection, ne le Pape Salvez Sa sanctitee, ne nul Roy ou Prince purroit granter tiel privilege, that God faving his perfection, nor the Pope faving his holiness, nor any King or Prince could grant fuch a priviledge : Et si aucun Prince vorroit tiel privilege granter, and if any Prince should grant any such priviledge, the Church whose actions should be according to vertue, was not to accept of any priviledge whereby such a grievous sin might arise, to delay or hinder any man voluntarily of his just Debt.) (h) William of Mountacute Earl of h Rot. Parl. Salisbury, having a great Plea of Landlong depend- 3 R. 2. m. ing for the Honour and Castle of Denbigh in Wales, 2). against the Earl of March in Parliament upon a Writ of Error, Sir John Bishopson Clerk and Servant to the faid Earl of March, in the absence of the faid Earl then being in wales preparing himfelf to go into Ireland, where he was appointed to be the Kings Lieutenant, shewed the Kings Protection made to the faid Earl for one half year, which being read was allowed.

In the 6th. year of the said (i) Kings Reign, the 16 R.2. Rot.

Commons in Parliament not defirous as it may Parl. 12. 15.
feem to take their course in Law, which several

Acts of Parliament had allowed them, did pray,

That the Statutes of Purveyors be observed, and that
ready payment may be made. To which the King
answered, That the Statutes therefore made should

be observed.

In the 7th. year of the Reign of the aforesaid k 7 R.2. Ro. (k) King, the Commons in Parliament petition- Parl. m. 56

ing the King, That remedy might be had against Protections: The King answered, That the Chancellor upon cause sould redress the same.

1 Rot. Parl. In the 8th. year of that King, the (1) Commons in Parliament did pray the King, That remedy 8 R. 2. m. might be had against the Clerks of the Exchequer, 29. ( whose business under the Treasurer being to collect and gather in the moneys and profits of his Revenue, might in some fort be taken to be a Latere, and as his Servants) who would not allow the pardons of King Edward the third without great charge to the parties. Unto which the King anfwered. That he who hath cause to complain may do so and be heard.

m Rot. Parl. In the 9th, year of his Reign, the (m) Citizens 9 R 2. m. of London did in Parliament petition the King. 31. That the Patent lately made to the Constable of the Tower of London, who by colour thereof took Custom of Wines, Oysters, and other Victuals coming by water to London, (wherein their Charter and the Common Law would have relieved them ) might be rewoked; which was granted.

In the roth. year of the faid (") Kings Reign. n Rot. Parl. 10 R. 2. m. the Commons in Parliament petitioning the King, 26. That no Protection to delay any man be granted: The King answered, That who should especially complain may find remedy at the Chancellors And in the fame year and Parliament, praying That no Protection be granted from thenceforth in Affise or Novel Diffeisin, or other plea of Land: The King answered, If the same be demanded he will be advised before the grant.

And

And in those and other Parliaments, where within the virge and compass of loyalty and modefty, they were by the favour, indulgence, and allowance of our Kings, permitted by their Petitions, Procurators, or Representatives, to speak more plainly than at other times, or in other places in the representing of any grievances, did it

with fuch an awful regard and tenderness:

As conceiving themselves to be grieved by a more than ordinary number of the Kings Serjeants at Arms bearing the Royal Masses or Maces, they did in the aforesaid Parliament of the 10th. year of the Reign of the aforesaid King Richard the second, Petition the King, That there might be no more Serjeants at Arms than had been heretofore; and that for doing otherwise than they should, they might be expelled.

And were in the 20th. year of his ( ) Reign fo o Rot. Parl. carefull of his Officers, as they did in Parliament 20 R. 2. m. complain, That they were excommunicated for 36. making Arrests or Attachments in the Church-yards; and prayed remedy: To which the King answered, Right shall be done to such as be especially grieved.

In the second year of the (p) Reign of King p Rot. Parl. Henry the 4th. petitioning the King in Parlia- 2 H. 4. m. ment, That no Protection be granted to any person 58. Religious: The King answered, That the Protections with the clause Volumus granted to them, shall be revoked, and they shall have such Protections granted unto them.

In the same Parliament the (q) Commons did 92 H. 4. pray, That no man be kept from Justice by any Writ, Rot. Parl. Ddd

or other means obtained from the King by Sundry Suggestions, on pain of twenty pounds to the obtainer of the same: whereunto the King answered, The Statute there appointed shall be kept, and who doth the contrary, shall incurr the pain aforesaid.

In the fifth year of that Kings Reign, they petir 5 H.4. Ret. tioned in (r) Parliament, That no Supersedeas Parl. m. 73. (which may be understood of Protections) be granted to hinder any man of his Action: whereunto the King answered, The Statute therefore made,

Mall be observed.

In the 7th. and 8th. year of his Reign, the f Rot. Parl. (1) Commons in Parliament ( although there 7 & H. 4 were then divers Laws and Statutes in force to m. 69, 70, quiet their fears, or relieve their grievances, ) did \$ 82. petition the King, That none about his Person do pursue any suit or quarrel by any other means, than by the order of the Common Law; and that none of the Officers of the Marshalsea of the Kings house do hold Plea, other than they did in the time of King Edward the firft.

By an Act of Parliament made in the (t) 7th. t 7 H. 4. year of the Reign of that King, grounded upon cap. 4. some Petition to that purpose, No Protection was to be allowed unto Gaolers of the Marshalfea, Kings-Bench, Fleet, &c. that do let Prisoners for debt go at large, and afterward purchase Protections; which admitteth fuch Prison-keepers capable of

u 7 & 8 H. Protections where they were not guilty, or to be 4. Rot. Parl. Sheltered from the punishment of fach offences. In the 7th. and 8th. year of the (u) Reign of m. 38. 0 2 H. 4. cap. 14. that King, the Commons in Parliament (although

by an A& of Parliament made in the second year of the Reign of that King, Every Purveyor that did not make ready payment for all that he took, was to forfeit his Office, and pay as much to the party grieved;) Petitioning the King, That payment might be made for Victuals taken by the Kings Purveyors from the time of his Coronation: The King answered, He is willing to do the same, and that all Statutes of Purveyors be observed.

And in the 11th. year of his (w) Reign peti-W11-H. 4. tihning him, That payment might be made for Victu-Rot. Parl. als taken by his Purveyors; he promised conveni-m. 16.

ent payment.

In the third year of the Reign of King Henry the fifth, the (x) Commons in Parliament (al-x3 H.5.Row though they had before sufficient remedies by Parl. m.38. Law, did Petition the King, That the Purveyors may take no provisions in the Market, without the good will of the party, and ready money: To which the King answered, That the Statute therefore should be observed.

In the Parliament holden in the 4th. year of the (y) Reign of King Henry the fifth, the Com-y4H5.Ret? mons did Petition the King, That none of his Sub-Parl m28. jests be fore-barred of their due debts or suits for the same, by colour of protestions granted to any Prior Alien, but during such time as they should serve the King beyond the Seas: unto which he answered, The Prerogative and Common Law shall be maintained.

In the 20th, year of the Reign of King Henry 2 20 H. 6. the fixth, the Commons in (2) Parliament were Rot. Parl. 12.

Ddd 2 fo

fo unwilling that their own concernments should hinder any of the Kings affairs, as they did petition him, That John Lord Talbot purpofing to ferve the King in his Warrs in France, a Protection with the Clausa volumus might be granted unto him for a year, and that by Parliament it might be ordained that it it be without the exception of Novel diseifin, and to be put under the Great Seal of England with other Immunities, whilst he be so in the Kings service; which the King granted, Provided that the faid John Lord Talbot, and Margaret his wife, Edward Earl of Dorset, and others named, should not enter upon any Lands whereof James Lord Barkly, and Sir William Barkley his Son were seised the first day of that Parliament, or bring any Action concerning the same.

And so little defired the heretofore too powerfull Clergie of England to extend their power where they legally and inoffensively might

do it.

CHAP.

## CHAP. XIII.

That the Clergy of England in the height of their Pride and Superlative Priviledges, Encouragements, and Protection by the Papal over-grown Authority, did in many cases lay aside their Thunderbolts and power of Excommunications, appeals to the Pope, and obtaining his Interdictions of Kingdomes, Churches, and Parishes, and take the milder, modest, and more reverential way of petitioning our Kings in Parliaments, rather than turn the rigors of their Canon or Ecclesiastical Laws, or of the Laws of England, against any of the Kings Officers or Servants.

S they did in the 14th. year of the Reign of King Edward the third (although by the Statute made in the 28th. war of the Reign of King Edward the first, making some Actions and Injuries which they then complained of to be Felony, they might without their petitioning in Parliament have had ample and easie remedies) petition the King in (a) Parliament against some a 14 8.3. 6 grievances and oppressions done by some of the Ret. Parl. Kings Servants to people of holy Church by his 14 E. 3. ms Purveyors and Servants, amongst which, were 12. the abuses done by his Purveyors, in taking the Corn, Hay, Beafts, Carriage, and other goods of the Arch-bishops, Bishops, Parsons and Vicars, without the agreement and good will of the Owners, and did thereupon obtain the Kings Letters

Letters Patents under the Great Seal of England, which in the Parliament Roll is called a Statute, and is as an Act of Parliament printed among the Acts of Parliament; did declare, That he took them and their possessions into the especial Protection of him, and his Heirs, and Successors, and that they should not be any more so charged, nor to receive into their houses Guests nor Sojourners of Scotland, nor of other Countreys, nor the Horses, nor Dogs, Faulcons, nor other Hawks of the Kings or others against their will, saving to the King the services due of right from them, which owe to the King the same services to sustain and receive Dogs, Horses, or Hawks.

In a Parliamant in the first year of the Reign of R. R. Rot. King (b) Richard the second, although divers Parl. m. 115. Laws in force had provided them remedies of course which needed no petitioning, they did petition the King, That they were upon every temporal suggestion arrested into the Marshalsea, and paid for their discharge 6 s. 8 d. where a Layman payeth only 4 s. unto which the King did answer, Let the party grieved complain to the Stemard of the house-

hold, and they shall have remedy.

And did in that but follow the patterns of Loyalty, Prudence, and felf preservation, cut out and left unto all true hearted Englishmen by their worthy and pious Ancestors and Predecessors, who when the Tenures in Capite and by Knight Service which obliged all the Nobility, and many thousands of the best part of the Gentry, to sollow their Prince to his Warrs abroad, or defend him and his honour at home, did in their duty to him,

and the care of their own estates and concernments, with their numerous well-wishing and dutifull Tenants attending them, follow him into the Warrs and Voyages Royal, and remained there by the space of forty dayes at their own charges, and afterwards as long as they lasted at the the Kings, which must needs be a great obstruction to many mens Action, or the recovery of their Debts or Rights, and much better understand that univerfal Axiom and Rule of the Laws of Nature Necessity, and Nations, then the late ill advised Lord Mayor, and some Citizens of London did, who in the late dreadfull fire in the year of our Lord 1666. did, to fave the pulling down of a few houfes to prevent the fury of a most dire and dismal fire, and not a feventh part of their goods, did fee but too late the necessity of pulling down some houses, and when they might have endeavoured it, would allow it to be warrantable by the Lord Mayors order, but not the Kings, and in that fond dispute and his Timidity, most imprudently fuffer and give way to the burning down of many thousand houses, and converting into ashes almost all that once great and flourishing City, that privata cedere debent publicis, every mans private affairs were to be laid afide, and give place to the publick being, the best way of felf preservation: And did not as they would do now, rush upon, Arrest, or Imprison either the Kings Servants, or fuch as were imployed by him. or unto whom he had granted his Writs of Protection, without asking leave of him; but with a modesty and reverence becoming Subjects, fupplicate him for a Revocation: or if they did not or could not purchase it that way, did sometimes become Petitioners in Parliament for some regulations in Protections granted upon some special and temporary imployments to fuch as were not his Servants in ordinary, not for a total abolition, or to take away that part of the Kings Prerogative in order to the Government and their own well being; the answers whereunto shewed as much care in the King and his Couucel, as might be to give them content and fatisfaction, and at the fame time not to depart from or lessen the Rights of the Crown more than was meerly necessary or in grace or favour for that particular time, occasion, or grievance, to be granted or remitted unto them.

And no less carefull were the Judges in former ages in their delegated Courts, and proceedings in Justice, to pay their respects to the service of the King, and likewise to his Servants, or any other imployed therein.

## CHAP. XIV.

That the Judges in former times did in their Courts, and proceedings of Law and Justice, manifest their unwillingness to give or permit any obstruction to the service of the King, and Weal Publique.

WHen Bratton declares the Laws and Usage of the Kingdome to be in the Reign of King

King Henry the third, and King Edward the first, that Warrantizatur Essonium multipliciter quandoque per breve Domini (c) Regis, ubi non est necessi- c Bracton tas jurare sum Dominus Rex hoc testatur per literas lib. 5 de Esso-Suas quod fic detentus est in servitio suo; & viden- nus cap. 1. dum est utrum quis tencatur de necessitato ad tale servithum, vel si fuerit cum alique qui tenetur sicut Miles vel Serviens de familia omnibus istis debet subveniri: An Essoin is warranted many wayes by the Kings Writ, where the Tenant or Defendant. needs not to swear when the King witneffeth byhis Letters that he is deteined in his fervice; wherein it is to be observed, whether he be necessitated to such a service, or if he be with another who as a Knight is obliged thereunto, or as a Servant in the Kings Family, in all which he is to be holpen and fuch an Essoin allowed.

In causa dotis & ultime prasentationis (d) propter d Ibidem ca. necessitatem lapsu temporis inductam warrantia vero 3. S. 4. de servitio Domini Regis, non est concedenda in omnibus nec sine rationabili causa. Et cum alignando de voluntate Domini Regis concedatur, non erit omnino per justic. quassanda, sed volunt as Regis expressa inde erat expectanda: In a case of doner and last presentation, the warranty of the King that the Tenant is in his fervice is not to be granted, in regard of lapse of time which may cause a prejudice to the Demandant, nor is not to be granted in all cases, nor without a reasonable cause. And when it is fometimes granted at the pleafure and will of the King, it is not at all to be qualhed or rejected, but the Kings express will and pleasure is to be expected.

e Idem ibidem ca. 5.

Where a man is Effoined in fervitio Domini Regis ultra Mare vel citra, differri poterit loquela quamdiu Esfoniatus fuerit in servitio Domini Regis, dum tamen (e) habet ad manum quolibet die warrantum fuum breve Domini Regis, in regard that he is in the fervice of the King either beyond or on this fide of the Sea, the fuit is to be deferred as long as he shall be in the service of the King, so as he do eve. ry day produce the Kings Writ to testifie it; after a defalt entred, capiatur dies amoris per officium Judicis, vel ex voluntrate Regis, vel ex necessitate aliqua, the Judge may in favour (or discretion) grant (f) another day, or at the Kings comlib. s. de de- mand, or upon some other necessity.

f Bracton

faltis, 9. 4. g Idem lib. 5. de war-

rantia, 9.9.

Where the King is vouched to warranty, it is cum quadam curialitate, in a certain (g) observance of duty or respect unto him to be only entred, because he may not be summoned & sine Rege respondere non potest, that he cannot answer without the

King.

Ralph de Hengham a Chief Juffice of England under King Edward the first, about the 16th. year of his Reign, faith that Effonium de fervitio Domini Reh Hengham gis semper admittitur, & locum tenet (h) ad alium

magna. ca 4. diem dummodo porrigatur breve Domini Regis de warranto Essonii predicti, an Essoin of the service of the King is alwayes to be admitted, and gives a respite to another day, so as a Writ of the Kings be brought to warrant the Essoin, Quando Dominus Rex est in exercitu Reo secum existente, when the King is in the Army, and the Tenant or Defendant with him, and it be made to appear in the ChanChancery there shall be the like warranty; but if the King be not in the Army himself, but sends one into it in his service, and it is not sound in the Rolls of Chancery a Writ of Protection shall be granted, Si aliquis Miles Compatriota ipsius sacramento testissectur ipsum esse tali aie in servitio Domini Regis, if any Knight (or Souldier) shall upon his Oath testishethat he was such a day in

the Kings fervice.

After a Writ of View, and a Petit Cape, & aliis diebus prateritis & futuris, absentia Rei salvari potest per Esonium & Warrantum de servitio Regis, and other dayes past and to come, the absence of the Tenant may be saved by an Essoin and Warrant of the Kings service, at which time also, if default be made, de plano constat possit (i) prore-i Idem ibigari hujusmodi loquela de uno termino in alium, it demea. 11. cannot be denyed but the Action may be prorogued from one Term to another, although the death of the Demandant, loss of rents and profits may happen in the mean time, and saith Hengham, frequenter sit talis dilatio ex lege & principis beniscio, frequently such delays may happen by the Law and the Princes savour.

In Trinity Term, (k) in the 17th, year of the k Trin. 17.
Reign of King Edward the third, a common E. 3. 21.
Essoin was cast for the Defendant, and also an
Essoin of the service of the King.

In Hillary Term, (1) in the same year, a Pro- 1 Hill. 17 E. tection of a later date than the quarto die post was 3.7. allowed in a Plea of land, eo quod in servitio Re-

gis.

Ece 2

In

m Pascha 18 E. 3. 6.

In Easter Term, in the 18th. year of his Reign, in a Writ of disceit brought by Gilbert Colley Plaintiff against (m) William de Milborne Chivaler, for that after a Venire facias fued in a Writ of Formedon a Protection was brought by the Tenant which did put the Action without day, fupposing by the Protection that he was in the Kings fervice beyond the Seas, where before and after he was continually in England in fuch a County and place in despite of the King against the Law and Custom of the Realm, disceit of the Kings Court, and diffeifin and damage of the Plaintiff or Demandant, the Defendant pleaded, that as he was going beyond the Seas, he fell fick at fuch a place, and could neither go nor ride: before which time the Protection was allowed, whereupon Issue was joyned.

n Trin. 19 E. 3. 1. In Trinity Term, in the 19th. year (n) of the Reign of King Edward the third, the Avowant being Essoned de service le Roy, and at the day not bringing his Warrant, the Plaintiss prayed damages and the 20s. allowed by the Statute, which the Court granted, but not the damages.

o Trin. 21 E. 3.18. In Trinity Term, in the 21th. year (0) of the Reign of King Edward the third, a Writ of Error being brought in the Kings Bench by an Infant to reverse a fine levyed in the Court of Common Pleas, after Errors affigued, and a Seire facing retorned, the Tenant of the Cognisee brought a Protection, whereupon the Judges to avoid the mischief which might happen to the Insant if he should not be inspected during his Nonage, and

under

understanding the Kings will that he had taken the Tenant into his Protection, did examine and inspect the Infant, and respited the reversal by giving a new day for him that had brought the Protection to alledge what he could against the reversal.

In Mich. Term in the same year (p) an Essoin p. Mich 21 de Service le Roy was challenged, for that the E. 3. Essoiner was under age, but it was not allowed, and in an Action of debt brought against the Countess of Kent as an Executrix, after Issue joyned and a Venire facias, she did cast a common Essoin, and at another day was Essoined de Service del Roy, and had another (q) day given by the like Essoin, q Eodem but not bringing her Warrant, the Court would Termino 32. not turn it to a default, but in regard of great delay 9. and damage alledged, taxed the 20 s. allowed by the Statute to 40 s. and the Nisi prius was granted.

In the 22th, year of his (r) Reign in an Affife, r 22 Affife the King by his Writ reciting that it was ordain-P. 9.

ed by him and the great men of the Land, that an Affife brought by any which was in the fervice of the King, thould from thenceforth be continued, testifyed that the Desendant was in the Kings service at Calais, and commanded the Judges to continue the Assis, and the Writ was, that although that the name of the said Desendant was afterwards inserted in the Writ Original, the Assis should continue as long as the Desendant remained in that imployment, or that the King should otherwise command, whereupon the Assis was

continued until the next Affise, notwithstanding the Statute which commands the Court not to surcease by any command of the great or lesser Seal.

the said Kings Reign, a Woman was Essoined de Service le Roy, quia Nutrix Isabella filia Regis. Et allocatur.

t Trin. 28

W Trin. 29

E. 3.

€. 3. 02.

In Trinity Term, in the 28th. year (t) of that Kings Reign, in an Action of debt the Defendant after he had been attached by his body gave bayl, and was therefore adjudged to be in Custody; but because the Protection was quia profesturus, and the Judges at all times have used to allow such Protection, it was allowed.

Mich 23 In Michaelmas Term, in the fame year, (u) a Woman was Essoined de Service del Roy, quia Nutrix Domine Elizabetha filia Regis Anglia, and the Demandant alledging that she to whom she was Nurse, was of full age, and so is not to be understood to have a Nurse, and prayed that the Essoin might be quashed, it was answered by the Court, she could not be a party to that averrment, whereupon the Essoin was adjudged and adjourned.

In Trinity Term, in the 29th. year (w) of the aforefaid Kings Reign, Effoin de Service del Roy being mistaken, was amended.

Upon a Protection quia profecturus, the King fignifying by his Writ that the party was may med and could not go in his service, commanded the Justices to proceed in the Action.

In

In the same Term, in an Action of debt brought against John Clinton Executor of william Clinton Earl of Huntington, a Protection being brought for John Clinton, the word Executor being interlined; the Court notwithstanding the Allegations made against it, allowed it.

A Protection quia profecturus was brought after an emparlance when the Defendant was come to an answer, and was of an elder date than the appearance, yet notwithstanding was allowed.

In Hillary Term, in the faid (x) year, a day was x Hill. 29 given upon a Protection after a grand diffres, and E. 3. tit.difin the faid Term Thomas Dallirine brought a Writ cest. of disceit against one, and counted that having brought a Writ of Formedon against him, and day was given untill the Octaves of St. Michael, the Tenant brought a Writ of Protection to endure for a year, fuggesting that he ought to remain at rork, whereas he remained at the time when he should have appeared in Court at Compton in the aforesaid County, and continued there by the space of a Month, and traversed that he was not in the service of the King to his damage of forty pounds, to which the Defendant pleaded, that he was in the fervice of the King according to the purport of the Protection, and traverfed that he was not continually at Compton aforefaid; and the truth being that he went to York and remained there one week in every month, the Court left it to a Quere what was to be done therein, and what kind of Plea he might have in fuch a matter.

y Trin. 39 In Trinity Term, in the same (y) year, in a Writ of ravishment de gard against divers, a Protection was brought for one which discharged and put without day all the others.

2.43 E 3.33. In the 43th. year (z) of that King, a Protection

was allowed for the Husband and Wife.

Where a man was (a) Effoined, and afterwards brought a Protection quia en Service le Roy, Thirning Justice said, that the Esson proveth that he is in the service of the King, and the Protection proveth that he is in the service of the King, and the one is dependant upon the other, and therefore awarded that the Protection should be allowed.

b Pasch. 7

In Easter Term, in the 7th. year of the (b) Reign of King Henry the fourth, a Protection being cast in a Writ of Formedon, quia moraturus in partibus VVallie, the Justices were in doubt whether it were to be allowed, for that VVales was within the Realm, and took time to advise. And in the mean time, although the time of the Protection was expired, would not suffer the Action to pass by default, but awarded a Resummons.

the Reign of that King, it was adjudged, that if a Purveyor took Vicuals for the Kings Houlhold, and be afterwards fued, he shall have ayd of the

King.

d Pasch. 11! In Easter Term, in the same (d) year, it was allowed by the Court to be Law, that if a man give bayl upon a Capias, and after bringeth a Protection, he and his Bayl are excused.

In Trinity Term in the 12th. year (e) of the faid e Trin. 12 Kings Reign, it was adjudged that in what soever H. 4. Plea an Essoin doth lye, there also lyeth an Essoin pour service le Roy, and two Essoins of the service of the King do not lye but one after the other.

In Hillary Term, in the same (f) year, it was f Hill. 12 H. agreed that an Essoin pour service le Roy, may be 4 cuit upon a retit Cape; and if he which doth cast the Essoin doth not make it good, or bring his Warranty, a Capias was to be awarded against him to answer the disceit.

And it is to be observed, that antiently before it was taken away by an Act of Parliament, the Essoiner in a common Essoin was to make Oath.

In Easter Term, in the third (g) year of the g Pasch. 3 Reign of King Henry the 6th. a Protection being H. 6.3. cast at the Nisi prius, and it being for one year, and the party coming again within the year, a repeal was obtained, and two precedents she wed, that in the like case Protections were repealed; whereupon by advice of the Judges a resummons was granted, and it was alleadged that the Plaintiff was at no mischief, because he may have his writ of disceit.

In Trinity Term, in the same (h) year, at an h Trin. 3
Alias nist prius, the Defendant being Essoined quia H. 6.
in servitio Regis, it was denyed because there was a great difference betwixt an Essoin and a Protection of the King, for that by the Kings protection the King taketh the party into his protection which is of record under his Seal.

Fff

i Palch. 4 H. 6. 4.

In Easter Term, in the fourth (i) year of that King, in an Action of Trespass after a diffress awarded against the Jurors, and the Array challenged, a Protoction was after a grand debate allowed, Martin one of the Judges of the Court of Common Pleas going to the Justices of the Kings Bench to ask their advice, and from thence into the Exchequer Chamber to Juni Chief Baron.

k Mich. 19 Protettion.

In Michaelmas Term, in the 19th. (k) year H 6.8. tit. of the Reign of that King, a man being taken by a Capias, had a Protection allowed quia moraturus, for the victualling of a Fort in Scotland, upon a probability that he came to London to buy victuals, and that iffue might be taken thereupon, and a repeal obtained.

1 Hill. 19 H. 6. tit. Formedon.

In Hillary Term, in the same year, Newson Justice said, that if the Demandant cast a protection it lyeth not, yet an Essoin of the Service of the King doth ; And where the King commandeth an Attorney (1) to do him service, whereby be ap. peared not, and the Client loseth in the mean time his land, and he brings a Writ of disceit against him. then it would be against reason that the King Should compell him to do him service, and that he (bould not he Essoined for that service; but in such a case it feems to be usual to record the Kings service, and in that case the Essoiner (ball be sworn that he was in the Kings fervice.

And that a woman may be in the Kings service, for . that she is Nurse or Landress; and a man, as his

Carver.

In Michaelmas Term, in the 22th. (m) year of m Mich 22 the Reign of that King, in an Action inter H. 6.

Brookesby and Everard Digby, al jour de nist prius a Protection was brought, and although Paston was of opinion it was not allowable because it did not agree with the Record, yet Acue was of opinion, that if the Protection said susceptimus in Protectionem, it was to be allowed.

In Michaelmas Term, in the 27th. (n) year of n Mich. 27 the aforesaid King, an Essoin cast for one who H.6. 5. was gone into the Holy-land was resused, because fix months were passed, and the Desendant should be allowed a year and a day, and it was said by the Judges that it was the like where the party was in service del Roy; yet it was allowed to be good in a common Essoin, and a common Essoin was cast accordingly.

And in an Action brought in the Exchequer by a Denizen against two Aliens, and the Jury adjourned, a Protection was brought by the one, bearing date the first day of the Nisiprius, and by the second, bearing date the second day, and both allowed as it was in a like case, and as it was held by the Judges of the one Bench, and the other in

the case of the Lord Hungerford.

In Michaelmas Term, in the 8th. (0) year of 0 Mich. 28 that Kings Reign, Danby Justice said, in the case H. 6.3. of Sir Robert Hungerford, that in one and the same day the Defendant may cast many Protections; and it was said that no Protection quia prosecturus purchased pending the plea is allowable, if it be not in a Voyage Royal, or with the King himself, or Fff 2

for great business of the Realm, as appeareth by the Statute made in the 13th. year of the Reign of King Richard the 2d. cap. 16. and Prisot chief Justice did bid the Defendant sue to the Privy Seal, and bring a Certificate that his Captain by Indenture was to serve the King in his warrs, which being shewed, and it appearing that he was to go into Norusandie to serve under such as the King should appoint, but because it appeared not by the Indenture nor the Protection that it was in the case of the Statute, the Protection was not allowed.

In the same Term Richard Vere bringing a Protection quia moraturus super vitulationem ville Calesie, and the Plaintiff averring that he was within the sour Seas and not in the Kings service, the Plaintiff was ordered upon a resummons to prove his averment.

p Pasch. 30 H. 6. 2.

In Easter Term, in the 30th. (p) year of that Kings Reign, after an Imparlance the Desendant bringing his Protection quiamoraturu. Super salva custodia Castri Domini Regis de B. in partibus transmarinis, that he was imployed in the safe custody of the Castle of B, in the parts beyond the Seas, and was afterwards seen in Court; it was said, that if a man protected be afterwards seen in England, the Plaintiff may sue forth the Kings Innotescimus to repeal the Kings Letters Patents for the Protection.

And that if a man bringing his Protection at the Nisi prius, if betwixt that and the day in bank the Protection be repealed, there shall be a resummons sued; and Danby said, that the Protection until the repeal was always allowable.

In

(405)

In Easter Term, in the 35th. (q) year of the q Fasch 35 Reign of that King, it was agreed to be law, that H. 6. 3. where Justices of Nist prius have no power to allow or disallow a Protection, they ought to surcease.

In Hillary Term, in the 38th. (r) year of the r Hillar. 38 Reign of the faid King, a Protection being cast \$11.6.5. for one that was committed to the Fleet, and had a Cepi corpus retorned against him; Moyle Justice alledged that he might notwithstanding be in the Service of the King, whereupon the next day after he was mainprised, and the Protection was allowed until the Court should further consider of it.

In Hillary Term, in the 39th. (1) year of the 1 Hill. 39 H. Reign of the faid King, a Protection being dif- 6. tit. quare puted because it wanted the usual form, it was al-impedit. ledged, that there needed no special Protection to go to Rome, for that the Embassadors or Procurators of the King who go and remain there for the profit of the King and his Realm, have never used to have such Protections; and if they had, it would have been seen before that time, and that the King by his Prerogative may take a man into his protection, where another is not to be disherited; and Moyle one of the Justices of the Court of Common Pleas then faid, that the King might grant a Protection for a year, and that being elapted, might grant another for the like Term, &c. but not at the first, and that a Protection quia profecturus doth not lye pendente placito, depending the Plea, if it be not in a Voyage Royal, or business of the Realm.

King Edward the fourth, at the return of a Petit cape against the Husband and Wise (which is a Judgement by defalt) the Husband did cast an Essoin of the Service of the King which was allowed; and it was in that case said by Moyle, that a Protection of the King differed from an Essoin of his Service, for that the intent and essection, and hath taken him into his protection and de-

Reign of that King, the Judges were of opinion, that a Protection cast quia moraturus that he remained with the Earl of worcester, who was Deputy to the Duke of Clarence, was to be allowed; for if the Duke by his Commission had power to make a Deputy, it is reason that he which was with the

Deputy in Service, should be excused by the Pro-

tection.

W Trin. 11 In Trinity Term, in the 11th. (w) year of that E. 4. 12. King, where one of the Vouchees made a defalt, & the other had a Petit Capias awarded against him, at the day of the retorn of the Petit Capias, he that made the defalt brought a Protection, which was adjudged to enure to them both.

\* Hill 21 E. In Hillary Term, in the 21th. (x) year of the
4. 16. Reign of that King, a Protection being granted
to T. Rokes, a Certiorari was directed to the Sheriffs of London to enquire if he attended in the Service of the King according to the tenor of the Protection, or followed his own business; and the
Sheriffs

Sheriffs of London certified that he did not attend the Service of the King, but remained at London attending his own business; whereupon the Plaintiff had an Innotescimus directed to the Judges of the Court of Common Pleas to repeal the said Protection, and he shewed the Writ to the Court, and prayed a resummons against the Desendant and had it.

In Hillary Term, in the 21th. (7) year of the y Hill 21 faid Kings Reign, after iffue joyned upon a Writ E. 4 35. of Entry and the Jury had appeared, the Counsel for the Defendant prayed the Court to grant an Habeas Corpus for him: and rhe Justices demanded of the Plaintiff and the Jury, if they would agree unto it, who confenting thereunto, the Habeas Corpus was granted, and the morrow after when the Jury appeared, a Protection quia moraturus that the Defendant was in the Kings Service at Calais was brought, to which being excepted that he was under age, and that it appeared by his own sheweing that he was in prison, it was anfwered, that the Protection was of Record, and to be believed before any such allegation: and afterwards the Justices demanded several times of the Defendants Counsel, if they would agree that the Demandant and the Jury should be adjourned until the next day, to the intent as was believed that the Demandant might in the mean time procure a repeal of the Protection which they supposed to be falle, and the Counsel for the Plaintiff praying time till the morrow to be advised touching the Protection which the Justices granted, the Juflices

stices perusing again the Protection, found that there was no default therein, and faid, they ought to allow it; which was done accordingly, and the

Jury was discharged.

9 Palch. 21 E. A. 6.

a Dver

P. & M.

And in the same (z) year, it was adjudged and declared to be Law, that where a Tenant in a Precipe quod reddat, had unduly purchased a Protection of the King, whereby the Plaintiff was put without day and prejudiced, that in that case he

might have a Writ of disceit.

In Michaelmas Term, in the fourth and fifth year of the Reign of King Philip and Queen Ma-,, in a Writ of Entry in Le per brought by one Huggard against Knever, an Essoin was cast by one Anthony Knevet for (a) The. Knevet, that he was Trin. 45 5, in the service of the King in the parts beyond the Seas, and day thereupon given, and some doubt arising amongst the Judges about the warranty of the Essoin and the form thereof, and amongst the precedents which could be found, that in the 35th. year of the Reign of King Henry the fixth, wherein the Abbot of westminster was Plaintiff against VV. Yeoman of the Kings Buttery under the Kings Privy Seal, not pleasing them, but being adjudged insufficient, the Judges were fo unwilling to disappoint the purpose and expectation of the Supreme Authority, as they themselves framed and devised a Writ to excuse the absence of the faid T. Knivet.

And although in Trinity Term, in the same year, the Queen who began her Reign the 26th. day of July 1553. did by her Attorney General by

the

advice of the Lords of her Privy Councel, demand the opinion of the Judges of the Court of Common Pleas, if a (b) prisoner in the Fleet upon an b Dyer Execution, who might be very useful in her wars, Trin.4 & might be licenced by the Queen with his Keep-P. & M. er to go unto Barwick for the defence thereof, it was resolved by all the Judges of both the Benches, that he could not be dismissed by her Protection, for that he was there to be kept in safe custody.

Yet in the fourth year of the Reign of Queen Elizabeth, she did by her Letter under her Signe Manual and Signet directed unto Tirrel Warden of the Fleet, cause (c) Thurland who was in c Dyer ibs-Execution for debt, to go with his Keeper, as hath dem. been before mentioned, about some affairs of hers

and the publique.

So tender were the Judges in the antient and past ages of the Supreme Authority they fate under, and the honor of their Princes, which imparted unto them fo much of the honor and dignity they enjoyed; and fo careful of the fafety and concernment of the publique, which was, or should be the greatest care and interest of every man, and had fuch an awe and veneration of Majesty in which the Supreme Authority and governing power refides, as where they perceived any Effoin of the service of the King unduly cast, or Protection not legally granted, as by mif-information, or necessity of preserving the publique peace and tranquility, or upon reason of State they might fometimes happen, they did not prefently reject the Writs Ggg

Writs of Protections of our Kings, but remit those that excepted against them to petition for their repeal by Innotescimus, and where Essoins of some imployed in their fervice were cast, did admit them, & put the cause without day, and order the Essoiners in the mean time to bring their Warrants, which if they failed, a resummons of them was awarded, and the fine of twenty shillings penalty imposed by an Act of Parliament, sometimes paid, and at other times pardoned; and as careful of the high Authority of his Soveraign was Sir Orlando Bridgeman late Lord Chief Justice of the Court of Common Pleas, when he refused to bayl upon a Habeas Corpus one that was committed by the Lord Chamberlain of the Kings Houshold for Arrefting one of the Kings Servants in ordinary without licence, and advised him to submit himself to the Lord Chamberlain; that humour and fashion of kicking against the Supreme Authority, and wraftling with the Lords Anointed in feeking to be bayled upon Writs of Habeas Corpus, granted by the inferiour and delegated powers, for commitments upon contempts by the Superiour, being fo novel and unusual, as the Books and Records of the Law, or our Courts of Justice have afforded us no mention at all, or very little of them, until the Reign of King James, or the beginning of the Reign of King Charles the Martyr, when by the unhappy arguments upon the cafe of the Habeas Corpora in the beginning of the Reign of King Charles the Martyr, the drawing afide of the curtain of State, and the dispute of the Kings power of

committing any one for contempts against him or his Authority (which every Juffice of Peace, and Master of a Company of Trade in London, can be allowed to do ) & by the peoples misunderstanding of the Arcana Imperii, secrets of State, and necessary rules of government, an unhappy fancy and spirit of opposition so intoxicated many of them, as they have believed it to be law and right reason, that if the King will not, so soon as they would have him. give leave to Arrest any of his Servants, the Law and his Courts of Justice are to do it, that if the King should by such a way of prosecution be inconvenienced by the want of their service, it is by his own default in making fo ill a choice of men indebted to attend him, or if they being fo Arrested cannot perform their duty, he is to provide fuch as may better do it, and if the King should cause any to be committed that had Arrested any of his Servants without licence, they were upon his Habaas Corpus to be bayled by the Judges of fome of the Courts of Law at westminster, and left at liberry to go to Law with him if they could tell how, or to incourage as many as would follow that evil example to mifufe his Royal Prerogative, which without any firetching or dilating of it to the very confines or wmost bounds of its regal Jurisdiction, is legally warranted by the defign and reason of publique good, the prefervation of every mans estate and property, and the good at one time, or in fomething or other of him that thinks himself the most delayed or injured in his humour or expectation; for it. Ggg 2 ought

ought to be every where reason, and so acknowledged, that as long as there is a King and Supreme Governour who is to take care of the univerfality of the people subjected, born, or protected under his government, he is not to want the means wherewith to do it, and that in order thereunto his service must needs be acknowledged to be for publique good, and the exemptions and privileges belonging thereunto no less than a Salus populi, the great concernment of the peoples peace, protection, welfare and happiness, and should be the Suprema Lex, that great Law in and by which the means of government, and the Royal Prerogative, was and is founded and established; and that fuch a cause built and sustained by the rules of right reason and justice, ought to be every where reason, and justly entituled to that Axiom, manente causa non tollitur effectus, the cause alwayes remaining constant and unalterable, the effects and operation naturally from thence arifing are necessarily to follow and be allowed, and that the cause of priviledge claimed by our Kings, the cause and fountain of all exemptions and priviledges fo largely given to many of their people, should not in the case of their own Servants have. its course or passage stopt or diverted.

When from that Spring, and those causes which have sertilized and gladded the Vallies of our Israel, have spring and arisen those necessary priviledges which the Nobility, Peers, and Baronage of England have antiently enjoyed in their personal freedome from Arrests, or Im-

prisonment:

prisonment of their bodies in Civil Actions, Pleas or Controversies, and from Common Process, or any Utlaryes which might trouble them or their high Estates, not only for the reason given in the 11th. year of the Reign of King Henry the sourch by Hull or Hulls, that (d) in Actions of dil H. Debt or Trespass, a Capias will not lye against an Earl or any of like Estate, because it is to be intended that they have Asserts, and a great Estate in Lands, whereby they may be summoned and brought to answer, or as many missed by that opinion do and would yet understand it. But principally,

## CHAP. XV.

That the Dukes, Marquesses, Count Palatines, Earls, Viscounts, and Barons of England, and the Bishops as Barons have and do enjoy their privileges and freedome from Arrests, or imprisonment of their bodies in Civil and Personal Actions, as Servants extraordinary, and Attendants upon the Person, State, and Majesty of the King, in order to his Government, Weal Publick, and Safety of him and his people, and not only as Peers abstracted from other of the Kings Ministers or Servants in Ordinary.

N regard of their fervice to their Prince, and a not feldome personal attendance upon him, and the honour and dignities thereunto allowed, and

born Dukes Marquesses, Earls, Peers, and Nobili-

ty, who are accounted to be as extraordinary Servants, ( not as the word Extraordinary hath been of late times misused by applying it unto those who were but quasi Servi, scarcely Servants, or but lifted and put into the Rolls of the Kings Servants, when they are neither known to him, or ever were or intended to be in his actual Service ) and honourable Attendants of their Prince. as well in times of Peace, as emergencies of War, and as Generals or Commanders of their Armies in times of War, and therefore the Emperour lib. 10 0-12. Justinian in his Letter or Epiffle to Narses a great General or Commander of his Army, mentions Aulus Anduatius, & C. Tubero, to be sub Narsetis Ducatu, as Souldiers under the conduct of Narles, making the word Ducatus which in after ages only fignifyed and was applyed to a Dukedom, then to denotate no more than an Army or Command only of it. And the Latine word Dux fince used for Duke.

The Dukes: e Spelmans Gloffa. in voce Dux. f Selden tit. honor, cap. 4. 9. 2. g Scholi 2 Tacobi Spiegel

Cuiacius ad

Commentar.

Gutheri-115 de offic.

domus Au-

gusta lib. 2.

cap. 19.

Tuftiniani

in lib. 2. Ligurini Guntheri Poeta 301, 302.

was as (e) Sir Henry Spelman well observeth, antiently nomen officiale, a name of Office, or Dux delegatus vel prafectus exercitus pastea feudale, by reason of the Lands which were (f) annexed to its honour by reason of that service afterwards honorarium, meerly Titular or honoured with that Title, in being heretofore his Chieftaine or Leader of an Army.

And so were the Marquesses (g) inthose antient times who were as Capitanei, Generals or great Commanders in the Empire or kingdome, and

were

were as to that by reason of their honorary posfessions, partakers in some fort of the Royal Dig-

nity.

Whereby to defend the Frontiers, the Marqueffis. Title and Military Office thereof, being about the year 1008. after the Incarnation of our bleffed Saviour, by the Emperour Henry firnamed Auceps of the house of Saxony, instituted to defend some of the Frontiers of Germany against the Incursions of the Hungarians, was so little known or respected in England about the Reign. of King Richard the second, as he having created: Robert de Vere Earl of Oxford, Marquels of Dublin in Ireland, and afterwards in the 21th, year of his (b) Reign John Beaufort Earl of Somerfet, h Horning Marquels of Dorfet, which dignity being after- in orbe Poliwards taken from him by the tempest and change tis, 3 part. of those times in the beginning of the Reign of King Henry the fourth; and the (i) Commons i Selden tit. in Parliament in the fourth year of that Kings honor.cap. 1. Reign, petitioning, that he might be restored to Parl. 4. H.4. that dignity, he humbly upon his knees belought m, 18. the King that he might not be restored to that which was fo novel and strange.

The Earls or Counts of England antiently, Earls. and before those dignities came to be granted for life or hereditary, were as to matters of juflice and government of Provinces as the Dukes Officiary, and before the Norman (k) Conquest, k Selden 2. were as our learned Selden observed, sometimes part. tit. ho-Synonimously entituled Dux or Dukes, as the nor. cap. 3. Dukes were fometimes ftyled only Comites or 5. 5. 6 cap.

Earls,

and appertaining to those Illustrious and high born Dukes, Marquesses, Earls, Peers, and Nobility, who are accounted to be as extraordinary Servants, ( not as the word Extraordinary hath been of late times misused by applying it unto those who were but quasi Servi, scarcely Servants, or but lifted and put into the Rolls of the Kings Servants, when they are neither known to him, or ever were or intended to be in his actual Service ) and honourable Attendants of their Prince. as well in times of Peace, as emergencies of War, and as Generals or Commanders of their Armies in times of War, and therefore the Emperour Justinian in his Letter or Epistle to Narses a great General or Commander of his Army, mentions Aulus Anduatius, & C. Tubero, to be sub Narsetis Ducatu. as Souldiers under the conduct of Narses, making the word Ducatus which in after ages only fignifyed and was applyed to a Dukedom, then to denotate no more than an Army or Command only of it.

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And so were the Marquesses (g) inthose antient gurini Gun- times who were as Capitanei, Generals or great Commanders in the Empire or kingdome, and were

Cuiacius ad lib.10 6 12. Tuffiniani Commentar. & Gutherius de offic. domus Augusta lib. 2. cap. 19.

The Dukes: e Spelmans Gloffa. in voce Dux.

f Selden tit. bonor. cap. 4. 9. 2.

g Scholiz Jain lib. 2. Litheri Poeta 301,302.

were as to that by reason of their honorary posfessions, partakers in some fort of the Royal Dig-

Whereby to defend the Frontiers, the Marquessis.

Title and Military Office thereof, being about the year 1008. after the Incarnation of our bleffed Saviour, by the Emperour Henry firnamed Auceps of the house of Saxony, instituted to defend some of the Frontiers of Germany against the Incursions of the Hungarians, was so little known or respected in England about the Reign. of King Richard the second, as he having created: Robert de Vere Earl of Oxford, Marquels of Dublin in Ireland, and afterwards in the 21th, year of his (b) Reign John Beaufort Earl of Somerfet, h Hornius Marquels of Dorfet, which dignity being after- in orbe Poliwards taken from him by the tempest and change of a part. of those times in the beginning of the Reign of King Henry the fourth; and the (i) Commons i Selden tit. in Parliament in the fourth year of that Kings honor.cap.t. Reign, petitioning that he might be restored to 9. 47. Ret. that dignity, he humbly upon his knees belought m. 18. the King that he might not be restored to that which was fo novel and strange.

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Spelman Ciloffer. in Diarriba de Cominious.

m Vizz mius de mandatis Principain, 1 1 0. 24.

n Chiffletius in Gloffer. Salis vacum Aluaticaruni voce Centenarius.

p Choppi-16.1.4.1.

Earls, and fignifyed men of Officiary dignities. or Councellors of State about their Prince and Soveraign, and were called Comites, quia a Comitatu vel Familia Principis (1) erant, in regard of their dayly or often attendance upon the King, or relating to his House or Family, & quasi in laborum principalium curarumque consortium assumpti a principibus (m) qui per cos maxima queque & gravifsima negotia expedire consueverant, and as more efpecially imployed to affift their Kings and Princes in their publique cares and labours, and the difpatch of their most weighty affairs, that custom or usage being Ano Taciti, when Tacitus wrote his Book or Annals, and Agricola his Son-in-law wrote his book de moribus Germanorum, of the Customs & Manners of the Germans, amongst the Germans, about the Reign of the Emperour Domitian, where the Comites Earls (n) or Graven, were Regum suorum Comites, atque Adsessores sacra vice Judicantes, & Jura per pagos vicosque reddiderint, were Attendants upon their Kings, fate in the Courts of Juftice as Affiftants unto them, & did as their Delegates distribute Justice not only there, but in all the Towns and Villages: Et ex more antiquis Germa-

o Claverius nis passim usitato, (o) ex precipua Nobilitate illos de Germ lib. sumebant qui provinciis & munitioribus locis imperi-1. c.sp. 15. tarent; and it was a custom amongst the old Germans every where used, to choose out of the chief Nobility such as might govern the Provinces and places of most concernment; (p) Et Verus Imnus de doma- perator confecto Bello Parthico Provincias Comitatinio Franciae, bus suis regendas dedit; and Verus the Emperour, after

after his warr ended with the Parthians, made eertain of his great men or followers his Comites, governours of his Provinces, (& who might also without an overftreining, conjecture which is not here endeavoured to be afferted, but is only left to the further enquiry and disquisition of the learned, be called Comites, in imitation probably or refemblance of the fidus Achates and Comites, faithfull Attendants of the warlike and afflicted Eneas, from whence the Romans, we, and many other Nations, have believed their discenss and originals (q) not a little honoured, and in the dark- q Alexander

nels and obscurity of former times and ages, was ab Alexand. the Gades ne plus ultra, and farthest reach of many Genial dieof the European, Brittist, and Western Nations rum lib. 9. Genealogies; ) were tanquam administri adjutores & Confilis ac rerum participes & (r) proce-r Gutherius res Palatii habentur, as Ministers of State, coad- del officis dojutors, and partakers of their Princes, Counfel, mus Auand Affairs, and the most noble of the Empire cap. 17. 6 attending upon the Emperors. lib.2 cap.21.

So as Marcellinus (f) was faid to be Comes (Idem lib. 2. Tuftiniani, a near attendant upon the person and cap. 19. affairs of the Emperour Justinian, who Reigned about the year of Christ 520. and were so entireled faith Loyfeau a learned and confiderable French Author, pour ce que les Empereurs esloyent contraincles faire plusieurs voyages pour (t) maintenir ceste t Charles grande estendue de leur Empire appelloient Comites Loylean leurs Compagnons ceux qui les accompanoient de traite des (uivoyent, for that the Emperors being conffrained Seigneuries, to make many voyages to maintain and keep in cap. 5. 27. order 102. Hhh

n Befoldus in differtatione de Comitibus Imper# 99.

order that great extent of their Empire, termed those which accompanyed and followed them (a mutes, or their ( w) Companions ( as Julius Cafar was before contented to call his Souldiers Commilitanes: or fellow Souldiers ) de forte que Comitatns & Comites estoient a Eux proprement ce que nous disons icy la Court & les Courtisons, and Comitatus antiently fignified ipfam Aulam & familiam Principis, the Palace or Court of the Prince and Earldome and Counts or Comites properly fignified that which we call the Court or Courtiers, faith L'Oysean, nom qui en fin soulz (w) Confantin fut un titre de haute dignite attribue particulierement aux principaux Officers de l'Empire, a name which at length under Constantine came to be a Title of great dignity, particularly attributed to the principal Officers of the Empire.

w L'Oylean traite des Seigneuries ibidem.

As the Comites Pratorii facri Patrimonii Confistorii Domesticorum Peditum & Equitum rei privata largitionum portus Riparum, (x) Earls of the Salus in notitia cred Palace, or Steward or Mafter of the household, or Court of the casual Revenue (as a Lord Treasurer ) of the Privy Councel, of the Guards of Horse and Foot, of the private expences, or voce Comitis privy purse, the tributes, rewards, or boun-& Seldentit, ties, of the Aquaducts, Havens, Lymits, or Borbonor 2 part. ders of Rivers, Comes Stabuli, Conftable or Earl cap. 1. 9. 8. Marshall, Comes Castrensis facri Palatii, Captain of the guards, Comes Africa, Comes Britannia, Comes littoris Saxonici per Brittanniam, Earl of Africk, Earl of Brittain, and Earl of the Saxon Shores in or by Brittain, Comes limitum Italia,

\* Pancirolntrinsque Imperii, Spelmani Gloffar, in

lie Earl of the Borders of Italy, Comes Illivici . Miffaniar and Orientis, Earl of Illivia, or Sclavony, and the East moraro of the South and the real soft the

And unto them, and other Earls; gave many great and noble Privileges and Immunitles, and were accompted by the Givil Law to be as the Emperors more especial Servants or Domefticks : Et inter Cubicularios ( y ) recenfetur Comes Domorum, and the Earl or Mafter of the y Cuiacius Houshold, though imployed in Cappadocia farr Commentar. from the Imperial Coure, was reckoned as of the ad lib. 12. Emperors Bed-chamber, as was likewise the Comes Justiniani. Sacra Vestis, Earl or Mafter of the Wardrobe had their Legions, Palatine, and Comitacenfes, Regiments or Brigades under the Enfigns of the Counts Palatine, and unto them and other Earls, gave many great and noble Privileges and Immunities, entertaining them in some honourable Offices in their Courts and Palaces, and afterwards upon their merit and diligence therein, did affign them as there was occasion to the Government of Provinces, wherein they, as the Dukes, Marqueffes and Earls, had at the first but a grant or estate anrante bene placito, at the pleasure of the Prince, or for a certain number of years, afterwards for life, and after that, in the declenfion of the Empire or the Soveraign Authority; fometimes by Uflispation of Cufton, and very often per factos Codicillos, by Grants or Letters Patents enlarged to an Effate in Tayl or Fief Masculine, or of Inheritance to them and their Heirs, who being by thofe which we will be when the thofe

Flori

those Titles of Honor, and Military and Civil Offices and charges dayly or frequently conversant about the satety of the Soveraign and his people, were justly accompted to be in all or most of the ages and civilized Nations Decus & Gloria Imperii, the Splendor and Glory of Majesty and Empire, signified by the Emblems or Figures of the Lyons guarding or supporting of Solomons Throne

Which most laudable custom was not only obferved in the time of the Western and Eastern.

Emperors, but of the Franks, Goths, Longobards.

and other Northern Nations who imitated them.

And from such honourable services and employ-

and aftonishing Royalty.

Chiffletius
ad vindicias Hispanicas lumina
prerogas. lunine 3 §. 5.

ments about Emperors, Kings and Princes, like-wise were derived Count Palatines, whom they found a kind of necessity to institute when they understood their other Subjects to be troubled, that none but Romans had those honours and dignities conferred upon them, and their Courts and Palaces (2) appeared to be solitary and unfrequented; and therefore opened the doors of honour to their Subjects of other Nations and Provinces, as appears by the after usage of the Roman and Grecian Emperors, and made and ordained Comites sacri Palatii, Count Palatines, which the Title of Count Palatine given by Charlemaine to Intholinus will surther evidence; and the Count, Palatines of the Empire of Germany, as Pasquier

that learned Advocate of (a) France hath re-

marked, had their names from their Offices, Su-

perintendencies, and Places which they antiently

z Huberti Leodii Commentar. de Palatinorum origine.

a Egnihartus de vita . & gest. Caroli Magni,

held (b) au tour des Empereurs de Rome & de la b Pasquier Suitte des Empereurs, and in their fervice and at- des Rechertendance as Crmites Palatii, were in Comitativa ches de la Principis, in the Retinue of the Emperors, which France lib. 2. in the elder times were so reverenced and respect. cap. 12. ed, as it was not unfrequently in many Laws and good Authors stiled Sacra, as meriting a veneration due unto Gods Vicegerents: Et ipfa Principis Aula of refidentia; and the Court and Palace of the Prince was, faith Marquardus Freberus, fometimes known by the name of Comitatus (c) & c Freherus facer comitatus, a place of reverence more especi- originum Paally appropriate to honor and men deserving it. and the French Kings Court is by the modern French at this day tearmed Comitatus; and in the time of Charlemaine and his Son Hludowick Kings of (d) France, the Earls were tanquam Judices, d Paulus de Judges in their feveral Earldomes or Provinces, qui post Regem populum regere debent, who next under the King (as the Dukes did in their feveral drienfis Ar-Dukedoms) were to govern-the people, & ne- chiepiscopi. ceffe eft ut tales instituantur qui fine periculo ejus qui eas constituit, quos sub se babent cum justitia & aquitate gubernare, & (e) officium adimplere e Hirckmiprocurent, there being a necessity that such should rus cap. 14. be appointed, who without danger of those who & 15. Epift. constituted or deputed them, may have under 4. & Chopthem such as may govern them with Justice and Equity, and do what belongeth to them.

And our Earls and English Nobility were of the like Character, Efteem, and Subserviency to our Kings and Princes, when in the time of Bertulphus

Latinorum comment.

Faget in vita Petri de Marca Pa-

pinus de domanio Franciæ lib. 1.45.

King

f Spelmans confil. 347.

King of the Mertians, who Reigned (f) in Engl land in the year of our Lord 8 51. fuch of them as had not, as Sir Henry Spelman faith, constant Offices or places in the Kings Court, tenebantur ex more & obsequii vinculo antiquissimo ( as also were the other Baronage ) in tribus maximis festivitatibuus Christi scilicet natalitiis Sancti Paschatis & Pentecostes Regi Annuatim ade Je cum ad curiam & personam ipfius exornandum tum ad consulendum de negotiis regni flatuendum que prout fuerat necessarium, were by most antient custome and tye of obedience at three of the greatest Feasts in every year, that is to fay at Christmass, Easter, and whitfontide, to attend at the Kings Court, as well for the honour of his Person and Court, as to advise and councel him as there should be occasion in the weighty affairs of the Kingdom, which (faith that great light and restorer of our English Antiquities) gave at the first an original and beginning to our great Councels, afterwards (g) and now called Parliaments; and Johannes Saresburienfis stiled all the great Officers of the English Court Comites Palatini, Earls or Lords of the Palace Royal, at least such as being Earls were also woce Consitis, honoured with the greater Court Dignities, and had relation to the Dignities and Privileges of our English Nobility: Such service and attendance of the Nobility upon the person and affairs of their Soveraign being not unusual in the dayes of (b) 1ehoiakim King of Judah, when Michalah the fon of Gemariah found all the Princes fitting in the Kings. house in the Scribes chamber, and standing besides

Spelmans comfil. :47.

g Seldens titles of bonour cap. 5. 9 17.60 Spelman Gloffar. in

h. Jer. 36. Derf. 12.

the King when the Roll of Baruch was read.

When the great King Abasterus made a Feast unto all his Princes and his servants, the (i) power i Efther cap. of Perfia and Media, the Nobles and Princes of the 1. verf :,4, Provinces being before bim, and he (bewed the honour 13, & 14. of his Excellent Majesty, he advised concerning the misbehaviour of his Queen Valchi with the wife men which knew the times ( for fo was the Kings manner towards all that knew law and judgement ) and with the seven Princes of Persia and Media, which same the Kings face, and sate the first in the Kingdome.

And those Officiary Dignities, Honors, and Privileges of the English Nobility, were so confonant to the Law of Nations, and the usage and customs of the Empire; as in Anglia tam ante quam post Conquestore (k) withelmum Normannum k Besoldus Comites seu Graviones Justitiarii hisque cum ad pri- in disseriavata quam publica judicia suis fuere in comitatibus, tione de Coand not only before, but for fometimes after the mitibus Norman Invasion, did under their Kings preside Rom Impeand govern the Justice of that County or Territo- in Jano Anry of which they were Earls, and had allowed glorum o unto them the Tertium denarium, Third penny, ejusdem tir. or part of the fines and amerciaments, and the bon. 2. part. customs, and some other casual profits belonging cap. 5 \$ 3. to the Crown in their feveral Counties, as our I Selden 2. Selden a (1) most universally learned and judi- pare tit bon. ous Lawyer hath in the Earldoms of Chefter and 651 lib Rub. Oxford observed, and for some of the Ages in Scace. f. fucceeding the Norman atchievment have been

rii. Selden

m Spelman Gloffer. in Catalog. cap tal. fuftiusr Angl.

Chief (m) Justices of England, as in the Reigh of King Stephen, Ambrey de Vere Earl of Giefnes Father of Ambrey de Vere the first Earl of Oxford, Robert de Bellomont or Beaumont Earl of Leicester in the Reign of King Henry the 2d. and Geoffrey Fitz-Peter Earl of Effex in the Reigns of King Richard the first and King John, our Bracton acknowledging that our Earls and Nobility were n Selden tit. upon occasions to (x) attend upon the person of hon. 2. part. their Sovereign Prince, calleth our Earls Comites a Comitando five a Societate, from or by reason of their accompanying or attendance upon the person of the Prince , faith, dici poffunt Consules Reges enim tales fibi affociant ad consulendum; and our Nation was not without its Local Count Palatives, who had greater authorities and profits in their Counties and Jurisdictions than other Earls, as those of Chester, Lancaster, Pembroke, and the Palatineships belonging to the Bishopicks of Durham and Ely.

Bracton lib. 1. cap. 8.

§. S.

And Hoveden our old Annals, and Selden that Monarch of Letters, do tell us, that King John, die Coronationis sue accinxit Willielmum Marescallum gladio Comitatus de Striguil, & Galfridum filium Petri gladio (0) Comitatus Esex ) qui licet antea vocati e Bent Comites, & administrationem suarum Comitatuum habuissent tamen non erant accincti gladio Comitatus, & ipfailla die fervierunt ad men-Sam Regis accineti gladiis, did upon the day of his Coronation gird william Marsbal with the Sword of the Earldome of Striguil, (or Pembroke) and Jeffery Fit ?- Peter, with the Sword of the Earldome

o Howeden & Selden 2. part. tit hon. cap. 5. 9 13.

dome of Effex, who although they were before called Earls, and had the government of their Earldomes, yet until then were not invested or girt with the Sword of their Earldomes, and the fame day they waited upon the King as he fate at meat with their Swords girt about them; and the fervice of our Earls and Nobility were held to be fo noceffary about their Soveraign in the Reign of King Edward the second, as John de Warrenna Earl of Surrey had in the 14th. year of that King a dispenfation not to appear before the Justices Itinerant, before whom in certain of his affairs he had a concernment in these words, viz. Edwardus dei gratia Rex Anglia &c. Justitiariis nostris Itineratur in Com. Norff. Quia dilectum & fidelem nostrum Johannem de Warrenna Comitem Surrey, quibusdam de causiis juxta latus nostrum retinemus hiis diebus per quod coram vobis in Itinere vestro in Com. pradicto personaliter comparere non potest ad loquelas ipsum in eodem Itinere tangentes prosequendi & defendendi nos ex causa pradicta Indempnitati prafati Co- p Placita de mitis provideri, cupientes in hac parte vobis manda- fur & affif. mus (p) quod omnes pradictas loquelas de die in coram Solodiem coram vobis continuetis usque ad Octabas Pas- mone de che prox. futur. Ita quod extunc citra finem Itineris Roffe & al. vestri pradicti loquela illa audiantur & terminantur mini Regis prout de jure & secundum legem & consuetudines Itin. apud regni nostri fuerit faciend. Edward by the grace Norwicum of God King of England, &c. to his Justices about in Com. to go the Circuit in our County of Norfolk, sendeth Norff anno greeting, In regard that for certain causes we have 14. Regis commanded the attendance of John of Warren Edw. 2. rot.

Iii

Earl

Earl of surrey upon our person, so as he canno personally appear before you in your Circuit to prosecute and desend certain actions or matters wherein he is concerned, we desiring to indempnishe the said Earl therein for the cause aforesaid, do command you that you do from day to day adjorn the said Pleas and Actions until eight dayes after Easter next; so as you may according to the laws and custome of our Kingdome, before the end of your said Circuit, hear and determine the

faid matters or actions.

In which Writ, the faid Earl being descended from VVilliam de VVarrenna who marryed a daughter of King VVilliam Rufus, was not stiled the Kings Coufin, as all the Earls of England have for fome ages past been honored either by the stile of Chancery, or the Secretaries of State in a Curiality, with which the more antient and less Frenchihed times were unacquainted; for notwithstanding an opinion fathered upon our learned Selden, that in regard the antient Earls of England being the Courins, or of the confanguinity or affinity of william the Conqueror, or many of the succeeding Kings, those Earls that were afterwards created did enjoy that honourable Title of the Kings Coufin; it will by our Records and fuch Memorials as time hath left us, be evidenced and clearly proved, that all the Earls which william the Conqueror and his Successors have created, were not of their Kindred or Alliance, and those that were of the confanguinity of our Kings and Princes, as Ambrey de Vere the first Earl of Oxford, whose Father

Father Awbrey de Vere marryed the Sifter by the half blood of william the Conquerour, was neither in the grants of the Earldome of Oxford, and office of Great Chamberlain of England, by Maud the Empress or King (q) Henry the second her Son, q Selden 2. stiled their Cousin, nor William de Albiney formerly part. tit. Earl of Suffex, who marryed Adeliza Widdow of hon. cap. 5. King Henry the first, Daughter of Godfrey Duke of 9. 10. Lorrain in the grant of the Earldome Castle and Honour of Arundel by King Henry the second. was termed that Kings Coufin, neither in the recital in other grants wherein the great Earls of Leicester and Chester are mentioned, is there any fuch intimation; for in the first year of the Reign of King John, William Marshall Earl of Pembroke. William Earl of Salsbury, and Ranulph Earl of Chester and Lincoln, in the second year of King Henry the third had it not, (r) and in the Sum- r Rot. Parl. mons of Parliament, Diem clausit extremum, and Johan. part. other grants or writs of divers of the succeeding 1. m. 4 Rot. Kings in the former ages, until about the Reign of Parl. 2 H. King Edward the fourth, where mention was Clauf & made of some of those and other great Earls of this Fines 5 E.3. Kingdom, there were none of those honorary Titles, and it is not at this day in the ordinary Writs and Process where they are named either as Plaintiffs or Defendance, and in France where those graces are in the Royal Letters and Missives, frequently allowed to the greater fort of the Nobility, howfoever the Queen Mother and [ Embassades Regent of France was about the year 1625. de Marescal pleased in a Letter to the late ( f) George Duke of de Bassom-

Iii 2

Buckingham to give him the honour to be called

her Cousin, very often omitted.

And those honours of attending their Kings, and being near his person, or being imployed in his Royal commands, were so defirable by as many as could by their virtue(antiently the Seminary and cause of all honour) obtain it, as they thought the service of their Prince not happiness enough, unless their Heirs and after Generations as well as themselves might partake of the honour to do fervice unto him; and therefore could be well content to have fome of their Lands which fome of our Kings of England gave them, which they hoped to hold unaliened to them and their Heirs in Fee or in Tayl, astricta, obliged and tyed also as their persons to those no inglorious services, as the Earls of Oxford holding the Castle of Hedingham in the County of Esex, and the Manor of Castle Campes in the Counties of Cambridge and Effex, to them and their Heirs in Tayl, by the Tenor and Service of being great Chamberlain of England, and the Manors of Fingrith in the County of Esex, and Hormead or Hornemead in the County of Hertford, descended unto them by the Marriage of a Daughter and Heir of the Lord Sanford, by the Service and Tenure of being Chamberlain to the Queens of England, die Coronationis sua, upon the dayes of their Coronation, that of great Chamberlain of England being an Office diftinct and feparate from that of Chamberlain of the Kings House, which was as appeareth by many Charters of our antient Kings and their Chamberlains Subscriptions thereunto, as witnesses long before the

the grant of great Chamberlain of England, and as then are now only holden at the good will and

pleasure of our Kings and Princes.

And Time in his long Travels hath not yet so let fall and left behind him those reverential duties and personal services of our Dukes, Earls, and Baropage, as to invite a disuse or discontinuance of them, when they have of late time not only when Summoned, perform'd several Ministerial Offices, as at the Coronation of our Kings, but at other great Solemnities and Festivals, as at the Feast of Saint George.

Where in the year 1627. being the third year of the Reign of King Charles the Martyr, the Lord Percy afterwards Earl of Northumberland, carryed the Sword before the King, the Lord Cavendish and Wentworth bearing up his Trayn, the great Basin was holden by the Earls of Suffolk, Devonshire, Manchester and Lindsey, the Earl of Devonshire the same day serving as Cupbearer, the Earl of Cleveland as Carver, the Lord Savage as Sewer, none of the Knights of the Garter that day officiating.

In the year of our Lord 1638, the Earls of Kent, Hartford, Essex, Northampton, Clare, Carlisle, Warwick, Dover, St. Albans, and the Viscount Rochford, were summoned by the Lord Chamberlain of the Kings houshold to attend at the instalment of the Prince Knight of the Garter; and in the year 1640, amongst other young Noblemen appointed to attend the King at his going to the Parliament, the Duke of Buckingham, Earl of Oxford, and Lord Buckhurst, did bear up his Trayn. The

(430)

part tit.bon. 647. 5. 9.10.

u Spelman Gloffer. in vocibus Con-Itabular . C' Mare cal. 146, 147. 399- 491. 402. 403.

46 E. 3. E/-

Catt.

The Earls of Leicester had the Office of Steward of England diftinguished from, and not so antient as the Steward of the Houshold who injoyed but an incertain effate of during pleafure, annexed to the Earldom of Leicester, and accounted as parcel of it. r Selder 1 2. William (t) Marshal Earl of Pembroke to be Earl Marihal of England, Bohun Earl of Hereford and Esex to be Constable of England, and to hold some principal part of their Lands and Estates by Inheritance, in Fee or in Tayl by the Tenure of those very honourable Offices and Services, as the Manor of Haresfield in the County of Gloucester, per fervitium esfendi Constabular Anglia, by ( u ) the Service of being Constable of England; and the Offices of Earl Marshal and Constable were distinct, and antiently exercised in the Kings Court as Marescalcia Curia, & Constabularia Curia, were afterwards, as the Learned Sir Henry Spelman conceived, by some extent and enlargement gained of their Jurisdictions (or rather by the Tenure of fome of their Lands ) separately stiled Constable and Earl Marshals of England, leaving the Office or Title of Sub-Marshal or Knight-Marshal, to exercise some part of the Office of the Earl-Marshals Jurisdictions, as more appropriate to the Kings House or Courts of Justice; some antient Charters of our Kings of England before the Reign of King Henry the second, and some in his Reign. after his grant of the Constableship of England, was made by him to Miles of Gloucester, informing us by the Subscriptions of Witnesses that there was a Constable during the Kings pleafure,

fure, and (w) fometimes two, befides the Con- w Degda'es stable of England, who claimed and enjoyed that 1. part Mo-Office by Inheritance.

nafticon An-

The Custody of the Castle of Dover, and the glicanum. keeping (x) of the Cinque-Ports, were granted x Rot. Parl. by King Henry the fixth to Humphrey Duke of 33 H. 6.

Buckingham, and the Heirs Males of his body.

The Earls of Oxford for several Ages, and the now Earl of Lindsey descending from them (y) as y Ret Clause. Heir General, now being Stewards, Keepers, 3 E. 10. or Wardens of the Forest of Essex, and Keepers of King Edward the Confessors antient Palace of Havering at the Bower in the said County, to him and his Heirs claimed and enjoyed from a Daughter and Heir of the Lord Badlesmere, and he from a Daughter and Coheir of Thomas de Clare.

And some of our Nobility believed it to be no abasement of their high birth and qualities, to be imployed in some other Offices or Imployments near the person, or but sometimes residence of the King, as to be Constable of his Castle or Palace of Windsor, as the late Duke of Buckingbam was in the Reign of King Charles the Martyr, and Prince Rupert that now is, or Keeper of the Kings house or Palace of VVoodstock, and Lieutenent of VVood-Stock Park, as the late Earl of Lindley was for the term of each of their natural lives. And some illustrious and worthy Families, as that of the Mar-(bals, Earls of Fembroke, Butler now Duke of Ormond, the Chamberlains antiently descended from the Earl of Tancarvil in Normandy, who was hereditary.

reditary Chamberlain of Normandy to our King Henry the first; and our Barons Dispencers have made their Sirnames, and those of their after Generations, the grateful Remembrancers of their very honourable Offices and Places under their Soveraign, it being accounted to be no small part of happiness to have lands given them, to hold by grand Serjeanty some honourable Office or attendance upon our Kings at their Coronation, as to carry one of the Swords before him, or to present him with a Glove for his right hand, or to support his right hand whilft he held the Virge Royal, claymed by the Lord Furnivall, or to carry the great Spurrs of Gold before him, claymed by John Hastings the Son and Heir of John Hastings Earl of Pembroke, or to be the Kings Cupbearer, claymed by Sir John de Argentine Chivaler, And some meaner yet worthy Families have been well content to have Lands given unto them and their Heirs to hold by the Tenures of doing some perfonal Service to the Kings and Queens of England at their Coronations, the Service of the King or Prince being in those more virtuous times so welcome to all men, and fuch a path leading to preferment, as it grew into a Proverb amongst us not yet forgotten, No Fishing to the Sea, no Service to the King.

And was and is so much a Custome of Nations, as in the German Empire long before the Aurea Bulla, the Golden Bull or Charter of Charles the 4th. Emperour was made in the year 1356 being about

the

the middle of the (z) Reign of our King Edward z Marquare the third, and not a new Institution as many have dus Frehemistaken it, as is evident by the preamble and rus de Origi other parts of that Golden Bull which was only Palatin. & made to preserve an Unity amongst the seven E. de Aurea lectors, and better methodize their bufiness and Bulla ca.25. Elections.

The Princes Electors were by the Tenure of Principis &their Lands and Dominions to perform several lectoris Palafervices to the Emperor and his Successors; As tini. the Prince Elector or Count Palatine of the Rhine Selden tit. was to do the service of Arch Sewer of the Empire hon. 2. part. at the Coronation of the Emperour, or other great Assemblies; the Duke of Saxony, Stall Master or Master of the Horse, the Marquess of Brandenburgh Chamberlain, the King of Bohemia Cupbearer, and in Polonia at this day Sebradousky the now Palatine of Cracon claimeth and enjoyeth by Inheritance the Office or Place of Sword-bearer to the Crown or King of Poland.

And so highly and rightly valued were those Imployments and Offices, as they that did but Officiate under them as their Deputies, believed their Heirs and Lands to be bleffed in the continuance and enjoyments of fuch Offices as might a Actus E. but sometimes bring them into the notice and af- lectionis of fairs of the Prince and Emperours, as the Baron of Coronationis Papenheim in Germany, and his Heirs, to be Sub- Mathize In-Marshall to the Duke and Elector of Saxony, the peratoris an. Baron of Limourgh Vice-Butler (a) to the King of orbis poli-Bohemia, and the Baron of Falkenstem Vice-Cham- tic.in 8 parti berlain to the Elector of Brandenburgh, who hath 2, 23,

ex Archivis lingtriffimi

(434)

alfo an hereditary Marshall, and the Electors of Mentz, Colen and Triers the like, and Christophorus Leisserus a Baron, was Culina Magister at the Coronation of the Emperour Mathias, in Anno Domini 1612.

Viscounts. b Selden t it. hon 2. part. cap. 3.9 19. Ø 20. 1 Part Dugdales Monafticon Anglican. 380. chibid. Carta H. 3. 382. Abbati & Monachis de Salopesbury c Carta Gulielmi Rufi in Dugdales Monasticon. m. 21. d Spelmans Gloffir. in Catalog. Capital. Fustic. Angl. 340.

The Viscounts, a Title no longer ago than the Reign of King Henry (b) the fixth, as our great Selden faith, turned into a Dignity, Titular or Peerage, being formerly and long after the Conquest, but the Deputies of the Earls in their feveral Counties for the Administration of Justice with which the (c) Earls were entrusted, fince centra distincts to the Title or Honour of Viscount, and but a Sheriff or Officer of the Kings for the execution of Justice, and so well liked of before that new Title of Viscounts was brought in betwixt the Earls and Barons of England, as Hubert de Burgo, afterwards Earl of Kent, was in the Reign of King John (d) not only Chamberlain to the King, but at one and the same time Sheriff of Norfolk and Suffilk, and the noble Rot. Pat. 18 and antient Family of Cliffords accompted it as a H 6. part 2. favour of the Crown to be hereditary Sheriffs or Ministers of Justice in the County of west merland where they had Lands, Baronies, and honourable Possessions, and having afterwards a greater honour by the Earldome of Cumberland conferred upon them, disdained not to let the one accompany the other in the fervice of their Prince.

Barons Temporal. The Barons, whether as the Judicious and

Learned Sir Henry Spelman (e) informs us they e Spelman be feudall as gaining their honours by their Lands Gloffar. in and Baronies given them to that purpose, which voce Baro. in our Records and antient Charters are not feldome meutioned by the name of Honours, as the Honours of Abergavenny Dudley, &c. or by Writs fummoned to Parliament, or by Patents created only into that Titular Honour, either of which made a Tenure in Capite (for otherwise they could not fit and enjoy their Peerage in Parliament, the Kings greatest Councel) are and antiently were accompted to be in their feveral Orbes Robur Belli, the(f) strength and power of Warr, and as Barones f Bracton or Vassalli Capitales, men of greater estate or note lib. 1.ca. 8.0 than ordinary, and were as the old Barones Selden 2. Bacerra or Baranci, who did with their Battel- part. tit.hon. Axes attend the Emperours of the East in their Courts or Palaces as their Guard, fometimes on Foot, and at othertimes on Horse-back, and were as Codinus faith, reckoned inter Honoratiores Officiales, the most honourable Offices of (g) the Court g Spelman attending near the Emperours either at their Glossar. in Meat or Chappel, or publick Addresses, and in voce Baro. the Kingdome of Bohemia, which is now no more than elective, and where there are neither Dukes nor Marquesses, and but few Earls; the Title of Baron is of fo high an effect, and the Barons of that Kingdome fo jealous of any thing which might diminish it, as when a Duke (h) who h Relation is a Stranger comes to be there naturalized, they de la confoido first oblige him to quit or renounce the using of ration de his Title of Duke there, and to content himself valstein.

Kkk 2

only with the Title of a Baron of Bohemia, and faith Sir Henry Spelman, Sub Baronis appellatione recte veniunt, our Dukes, Marquesses, Earls and Viscounts, are comprehended under the name of Baron, Cum vel maximus (as the experience and practice of our Laws and Kingdome will evidence) principis sit Va sallus, when the greatest of them is but a Liege-man and Vassal of the King, eique tenentur homagii vinculo seu potius Baronagii boc est de agendo vel effendo Barone suo quod hominem seu Clientem prestantiorem significat, and is by the Bond. of his homage or Baronage to do all things as his Baron, which fignifieth to be his Liege-man, and more extraordinary Subject, holding his Lands of him upon those beneficiary gainful & honourable conditions, and depending upon him and his Patronage, it being to be remembred that those honorary possessions and the owners thereof, did by that dependency well deserve that encomium and observation which John Gower (i) made of them about the Reign of King Richard the fecond, that The Privilege of Begalie was fafe, and all the Barony worthint was in his Effate.

i Joh.Gower confessio Amantis, & Selden tit. bon. 2. part. ca.5. § 16.

And it is well known that our antient Kings in all their Rescripts, Grants or Charters unto Abbyes, or any other of their people, directed them Archiepiscopis, Episcopis, Comitibus, Justiciariis, Baronibus, (k) Vicecomitibus & Ministris suis, to their Arch-bishops, Bishops, Earls, Barons, Justices and Sheriffs, and other their Ministers; the word Ministris being in the language of the times, not only since but before the Conquest,

k Dugdales
1. part. Monastic. Anglic, 384.

not infrequently (1) appropriate to the Kings 1 Mich. 18" houshold Servants, as the Charters and Subscrip- E.I. in Bastions of witnesses of many of our elder Kings will co Regis abundantly evidence, and the Barones Majores Norff. Rot. filed by our Kings not unfrequently in many of 46.6 Mich. their Charters Barones suos, Barones nostros, 6. 33,6 34 &c. Barones Regios, their Barons, and the Kings Ba- Rot. 75. rons, as William de Percy, and many other have been called, though by fuch Charters they could be no more concerned in it than to be Affistant in the performance and obedience of the Royal Mandates, and in many Acts of Parliament have: been stiled the Kings Nobles or Nobility; the Degner Thanes or Nobility, faith the eminently and univerfally learned Selden, (m) denoting a m Selden Servant or Minister, was as well before, as some- tit. bon. 2. times fince the Norman Conquest, Officiary, Perso- part. cap. 5. nal and Honorary, and the Possessions of the Thanes \$ 2. 6.4. from whence our Barons and Baronies were derived, were held by the Service of Personal Attendance: Et certissimum eft, faith that great and eminent Antiquary Sir Henry Spelman, (n) that n Spelman Barones Majores, the greater Barons which hold Gloffar. in of the King in Capiti Judiciis prafuere Aula Regia, voce Baro. did usually fit and determine causes or controverfies in (0) the Kings Court or Palace (as the o Selden tit. Barons of the Coife in the Exchequer who hon. 689. 2. were heretofore Earls and Barons of England do part. cap. 5. at this day in Westminster Hall judge and deter- Sett. 16. mine of matters concerning the Kings Revenues) And as the Lords of Mannors in their Court Barons de admit none to be Judges in those little

p Spelman Gloffer, in voce Baro.

q Scholis Jacobi Spiegel in lib. 2. Ligurini Guntheri, 301, 302.

T Spelman Gloßar in voce Baro, & in vocibus Pares & Parliament.

Courts but their Tenants (who are Freeholders. and which do immediately hold of them, are ftiled and faid to be of the Homage) and do fubferviently manage and order their Affairs therein, as very antiently they did confilio prudentum (p) hominum & militum suorum, by their presentments and judgements fo ( not much differing from the Laws and Customs of the Germans; where by the Court of Peers are understood cansarum Fendalium Judices a (9) Casare constituti qui sine provocatione cognoscebant, the Judges appointed by the Emperour to hear and determine without appeal matters concerning their Lands and Territories) in the House of Peers in Parliament, being the highest Court of the Kingdome of England, none were there admitted, or did administer Justice, nisi qui proximi effent a Rege ipsique arctioris sidei & homagii vinculo conjuncti, but fuch as were near unto the King, held of him in Capite, and were therefore called Capitanei Regni, as Sir Henry Spelman saith, Captains of the Kingdome and Peers being obliged and bound unto him by Homage (r) and Fealty, that highest and most honourable Court of the Kingdome wherein the Judicative Power of Parliament under the King their Head and Chief refides (for the lower house or Representative of the Commons are but as a Court of grand Enquest to exhibit the grievances of the Nation and the People, who did choose them to represent them as their Procurators give their consent to the raising of moneys for publick occasions and benefit, and the making of good. Laws ETHO à

Laws, intended to be obeyed by them ) being con-Rituted by the King their Head and Soveraign. the Prince or Heir apparent, Dukes, Marquesses, Earls, Viscounts, Barons, Arch-bishops, Bishops, ( and some of the greater Abbots and Pryors holding their Lands and Possessions of the King in Capite until they were dissolved the Lord Chancellor or Keeper of the great Seal of England, Lord President of the Kings Councel, Lord Treasurer, Lord Privy Seal, Lord Admiral, Lord Chamberlain of England, and of the Houshold, Grand Master or Steward of the Kings house, and the Kings Chief Secretary (1) though no Barons affifted 1 31 H. 81 by the Learned and Reverend Judges of the cap. 10. Law and Courts of Justice at Westminster Hall who have no vote, Masters of Chancery, Clark of the Crown, and Clark of that more Eminent part of the Parliament fitting in their feveral and distinct places according to their qualities and degrees upon benches or woolfacks covered with red cloth before the Kings Throne or Chair of Estate, attended by the Kings Senior Gentleman Usher of the Presence Chamber called the black Rod, to whom for or by reason of his attendance upon that honourable Assembly, is, and hath been antiently allowed & annexed for his better support the little Park of Windfor, with an house or lodge thereunto belonging, of a good yearlyvalue) Serjeantsat Arms. & Clarks of that higher house of Parliament, as the members reverencing & taking care for their Head and Soveraign, the Only under God, Protector of themselves and all their worldly concernments,

Gloffat in voce Baro. nitual.

(u) Selden tit, honor 795 part 2. cap. 5. Sect. 20.

laws and liberties, in which high and honourable Affembly the Archbishops and Bishops do enjoy (t) Spelman the priviledge and (t) honour of being prefent by reason of their Baronies, which howsoever given in Frank Almoigne and as Elemofinary are holden Barons Spi- in capite Endebent interesse judiciis curia regis cum Baronibus, are not to be absent faith the constitution or Act of Parliament made at Clarendon by K. Henry the fecond and that honourable Tenure being Servitium Militare, a tye of duty and service to them as well as to the other Baronage, any neglect therein was so penal unto them as the Lords in Parliament faith (u) William Fit ? Stephen cited by the learned Selden, did in the Reign of-King Henry the Second, notwithstanding that Arch-bishops plea and defence, wherefore he did not come to that great Councel or Parliament when he was commanded, condemn the Ruffling and domineering Arch-bishop Tho. Becket in a great sum of money, the forfeiture of all his moveable goods, and to be at the Kings mercy, & guilty of high Treason for not coming to that high Court when he was cited, and the reason given of that judgement, for that ex reverentia Regia Majestatis, & ex astrictione ligii homagii quod Domino Regi fecerat & ex fidelitate & observantia terreni honoris quemei Juraverat, for that in the reverence and respect which he ought to have shewed to the Majesty of the King, and by his homage made unto him, and his Oath of Fealty fworn to observe and defend his Honour, he ought to have come but did not; and a Fine was afterwards likewise obout the Reign of King Edward

Edward the second imposed upon the Lord Bellomonte or Beaumont for not attending when he was summoned ad Consulendum Regi to give the

And certainly those great and many fingular

King his Advice or Councel.

privileges and immunities given by our Kings the Fountains and Establishers of honours. and the Offices and Imployments about their Sacred Persons appurtenant unto that noble and very Antient Degree and Titles of Episcopacy, may easily invite the order of Bishops not to think it to be a disparagement to their Hierarchy, when the dignity Royal of our Kings do as the Roman Emperours fince the time of Constantine the Great, necessarily require by turns or sometimes in every year the attendance of the Bilhops in their Courts or Palaces, and they are to be a la (w) Suite du Roy pour ho- w Traittedu nover (a Majefte, to be near the King for the ho- politicque nour of his Majesty, when the King is the Guardi- de France an and Head of the Church, and the Arch-bilhop Par Mon! of Canterbury his Apocrifiarius ( which was an an- Marquis Marquis de tient Office and Title of the Bishops, afterwards C. in fine. appropriate to the Arch-bishop or (x) Metropoli- x Spelman tan ) who was in Palatio pro Ecclesiasticis negotiis Glossar, in excubare, to overfee and take care of the Affairs voce Apoof the Church in the Kings Court or Palace, & cristarins & Capellanus Regis ductus emnibus prafuit negotiis of in voce Coministris ecclesie, was stiled the Kings Chaplain, mes Palatipresided and was (under the King) superinten. dent as to Ecclefiaftical Affairs over all the bufisiels and Ministers of the Church and Chappel, and

in those things que ad divinum Cultum in principis anla pertinent precipua semper fuit cura atque sollicitudo Archiepiscopi, which appertained to Gods worship in the Kings Palace the chief care and bufinels thereof in the duties of Religion and holy Rites belongeth unto him, and is in that particular but as the Kings special Chaplain; not as Mathem Farker, a learned and worthy Archbilhop (y) of that See in the Reign of Queen ker antiqui- Elizabeth, when the Papel inflations were out of fallion, would make the reason of those privileges to be because the Kings and Queens of Engpland were ejus (peciales at que domeficos Parochianos, his more especial Parishioners, and the whole Kingdome how soever divided into distinct Dioceffes was but as one Parill, though he could not be ignorant that the Arch-bilhop of rork, and his. Suffragan Bilhops in one and the same Kingdome were none of his Parilly, nor was as Doctor Peter Heylin a right learned and dutiful Son of the Church of England by antient privilege of the See of Canterbury, supposeth him to be Ordinary of 7. History of the Court of his Majesties houshold, being reckoned to be his Parishioners, or of his Peculiar whereforer the fame shall be, the Chancellor or the Lord Keeper of the Great Seal of England being by special privilege Visitor of all the Kings.

the life of Will. Laud Arch-billiop of Canterpury, 209.

Chappels.

y Mat. Par-

tates Eccle-

fiz Britan.

211.74 2.5.

For the Kings Chappel and the Prelate of the: Honourable Order of the Garter, Dean and Subdean of the Chappel, and all other Officers of that religious and excellently ordered Oratory being

25.

as a part of the Kings most Honorable Household, when the extravagant and superaboundant power of the English Clergy by the Papal influences which had almost overspread and covered the Kingdome, affifted many times by the Popes Italian or English Legates a latere, fuch as were Cttobon, and fome Arch-bilhops of Carterbart was in its Zenith, or at the highest; and fate as Tupiter the falfcGod of the Heathens with his Trifulce or Thunder-bolts were not, nor are at this day although the Doctrine and Rights therein are of no small importance to the Religion and Exercifes thereof in the Kingdome fubicated to the Vilitation of any Bilhops or Arch-bilhops but of the King, who as Sir Edward Coke also acknowledgeth is their only Ordinary; And were heretofore so exempt from either the Popes or any Ecdefiattick Jurisdiction; as King Tole did in the first year of his Raigne grant to Walter Bi iftarr for his fervice done, Serjeantiam in Capella (ua scilicet illim quam Martinus de Capella (a) temuit tempere 1 Ro. cart. 1. Henrici Regis patris sui & praterea medietatem (a- Johannis in parum Episcopalium Habendum & tenendum de se & 29. Heredibus suis cum omnibus ad predictam Serjeantiam pertin: the Sorjeanty in his Chappel, which Martin de Capella held in the time of his l'ather King Henry: And also the Moiety of the Bilhops Capes or Copes (used therein) to have and to hold together with the faid Serjeanty of him and his Heirs.

And when all the Bishops of England which have been Chancellors or Keepers of the great L11 2 Scal.

Seal, Chief Justices of England or Treasurer, as fome of them have been, might understand that their more immediate service of the King, brought them an accession of honour and were then in a threefold capacity! First as the Servants and Ministers of the King, Secondly, as Bishops and Barons, the duty whereof King Henry the 3d. did! fo well understand, as in the 48th year of his Raigne travelling by Herefordsbire into wales and finding the Bilhop of Hereford absent, and many of that Clergy not refident, he fent-his Writ unto him; commanding him to take more care of his: Clergies refidence, and threatned otherwife to feize and take into his hands his Temporalties, Et omnia que ad Baroniam (b) ipfius Ecclefia pertinent, and all other things which to the Barony of his Church: or Bilhoprick belonged:

b Cokes 2. part Institutes 625.

And Thirdly, as great Officers of Trust and State under him the later being so esteemed to be the worthiest as the Act of Parliament made in the 31th year of the Raign of King Henry the 8th, how Lords in the Parliament should be placed didespecially ordain that if a Bishop hapned to be the Kings Cheif Secretary he should sit and be placed above all other Bishops not having any the great Offices of State and Trust under the King in the said Act of Parliament mentioned, and if the chief Secretary of the King were above the degree of a Baron, he should sit and be placed above all other Barons being then and there present. The Puisney Bishop attending in that high and honourable Court, being by antient usage of that Court to

pray every morning before the rest of that affembly during the Session of Parliament, before they do proceed to any Consultations or business, the other Bishops and the Arch-bishop of York, who once contended with the Arch-bishop of Canterbury for the primacy taking it to be an honour to Officiate before the King or to be near him, foas Edward Arch-bilhop of York, and Cuthbert Tunstall Bishop of Duresme being fent by King Henry the eight to fignifie unto Queen Catherine (c) the fentence of his divorce and they shortly after giving c Lord Heran accompt of her answer, did in a joint Letter birts Historian themselves rour Highweller Obedient ry of King fubscribe themselves, rour Highnesses Obedient Henry the Subjects, Servants and Chaplains, and the Arch-8th. 376. bishop of Canterbury for the time being was by the: Statutes or Orders of King Henry the eighth (d) d Statutes or made at Eltham in the 17th year of his Raigne, or- Orders made dered to be always or very often at Court; and all at Eltham the other Bishops aswell as the Arch-bishop, be- Anno 17.H. Lieving themselves to be by fundry Obligations hound unto it, are not feldome employed by our Kings in their feveral Diocesses and Jurisdictions, as the Bishop of Durham and the Bishop of Ely and 33 H. S. cas. their Successors in their County Palatines, and 10. with the Arch-bishops and other Bishops, are by the Kings appointment and Election, to preach in his Chappel at Court, in times of Solemn Festivals and Lent, and in the Lord Chamberlaines Letter or Summons, thereunto, are required to be ready at the several times appointed to perform their serwice therein, one of that antient and necessery order or Hirarchy being the Kings Almener another

115 Committeel. en Palensi-4.8H 1N. 40. air. dic-111 1115 111 4. cie confulibis Sulfacius Omment. ad 11b. 12 Cod. tuftimian 1 Sect. 3. O in appendice.

L. 11 11 2 1111-0.00 d 21.1. in Imperia Ciermanics. 14. 14. 84

the Dean of his Chappel to govern and fee good or ders observed therein, the later whereof hath his lodgings in the Kings Courts or Pallace, and untill the unhappy remitting of the Royal Pourveyance, had his Bouche at Court, or diet; the Eithop of in mehefier and his Successors to be Prelates of the Warter, another Clark of his Cloffet, as the Bilhop CLONford lately was to attend upon the King in the place where he fits in his Chappel or Oratory, the presence of the Prince, and an opportunity (f) aacrare ejus purpuram to be often in their fight, not by any Idolatreus worship, but as the civil Law and usage of the Antients have interpreted it by an extraordinary reverence done to him by kneeling and touching the Hem, or lower part of his purple or outward Garment; and immediately after kiffing his hand, which was accounted, faith (missing, to be no small favour which the it. 11. Sei- people and all the great men of the Eastern and tion 1. p.tit. Western Empires under their Emperors, deemed Leno, ca. 3. to be a happiness as well as an honour, as do the German Bilhops Electors in their larger and more Princely Jurisdictions; the Arch-bishop of Mente being Chanceller to the Empire for Germany, and to have a priviledge to affift at the Coronation of the Emperors by puting the Crown upon his head: the Arch-bilhop of Cologne for Italy, (g) and the Arch-bilhop of Tryers for France, or rather for the Kingdome of Arles or Rurgundy, as well as to be Electors of the Emperors and their Successors.

So as our Laws, which if a Bishop be riding upon his way, will not enforce him to tarry and

examine

examine the ability of a Clark perfented unto him though it may require half and prevent a lapfe or other inconvenience, but his convenient leifure ought to be attended, will allow an Earls in respect of his dignity and the necessity of his attendance upon the King and the Weal Publick, to make a Deputy (h) Steward and gives our Nobi- in commee as lity many great and high priviledges as not to Silon cale be examined in an action of debt upon account, but their Actorneys are permitted to be examined upon Oath for them, not to be amerced or taxed, but by their Peers, & fecundum modum delicti, (i) Beset in I .. according to the nature of their offerce, Et hoc ber de can a can Barones de Scaccario vel coraminfo Rege, and in fuch. .. cases before only the Barons of the Exchequer or before the King himfelf; if a Parkership be granted to an Earl without words to make a deputy, he may do it by his Servants; if a Duke, Earle, or any other of the Baronage do chase or hunt in any of the Kings Parkes, the law for conveniency, and in respect of his dignity, will permit him so many attendants as shall be requisite to the dignity of his estate, are not to be summoned to a Court (k) k Statute of Leet or Shire Reeves Turn or take their Oathes of Marlehr & Allegiance as all other Males above the age of 12, or Mirch are to do neither they nor their Wives are rough, 52where they cast an Esseine to make Oath as those which are under the degree of Barons ought to do of the truth of the cause alledged for their Essoine, but are only to find pledges, and if upon that (1) 1 Flee: 16. 6. Essoine allowed a default be made at the day ap- ca. 9. pointed, amertiandi sunt Plegii, the pledges (but

Cokesy Ry.

not the Earles or Barons ) are to be amerced, are exempted by the Seatute of the 5th of m Eliz. c. 1. (m) Eliz. cap. 1. from taking the Oath of Supremacy, for that the Queen; as that Statute faith, was well affured of the Faith of the Temporal Lords, shall have the benefit of their Clergy n 1 E iz. c. 2. in all cases, but Murder and (a) Poysoning are not to be put to the Rack or tortured, nor to fuffer death even in cases of Treason, by the shamefull death of Hanging, Drawing and affixing their Heads and Quarters in some publick places, (or as at Naples, (0) they execute common persons for such o Memoires most execrable offences, by beheading them, and du duc du putting their Heads upon the Market-place, and Guife. hanging afterwards the naked Corps in some pubblick place by one of their Toes) but are by the favour and warrant of the King only beheaded, and their bodies with their heads laid by, permitted to be decently buried: Shall not be tryed by any Ecclefiastical Courts, but per Pares, by their Peers, for Non-conformity to Common-Prayer shall have Chaplains according to their feveral p 21. H. 8. degrees (p) and limitations of number, who may hold two Benefices with cure; When the Sheriff ca 13. of a County is commanded to raise the posse comitatus, the power of a County, he is not to comq Coke 3. mand the personal service of the Baronage (q) or part of the Nobility, a Baron or a Noble man is not to pray Institutes. that a Coroner may receive his acculation or to ca. 56. tit. prove and approve his accusation or appeal in every approver. point or to be disabled for want thereof, When the King by Writ of Summons to Parliament, Scire

Facias

Facias or his Letters millive shall fend for any of the Arch-bishops, Bishops, Earls or Barons to appear before him or give their attendance, they may in their going or returning (r) kill a Deer or two ro H. 3 ca. in any of his Forrests, Chajes and Parkes, and carry 11. them away, a Capias ad satisfaciend. lieth not against Hil. 20. E. r coram Rege Wallia Rot. impannelled of a common Jury although it be for 37. the service of the Country, no Attachment for a contempt in not appearing (f) or answering in Chancery lyeth against them, their Lands, parcel [ 14. Eliz. of their Earldoms, Baronies or Honors, being not Gromwell's to be contributary to the wages of Knights of the case Dyer. Shire (t) or County wherein those Lands do lie, 316. are in cases of Felony or Treason; to be tryed t Magna Charta 29. only by their Peers, and their Wives are by a 20 H 6c.g. Statute made in the 20th year of King Henry the 10 E.4.6. 6th, to enjoy the like priviledge; upon the Sure- 20 H.6. c.g. ty of the Peace prayed against a Baron, he is not to be arrested by warrant from a Justice, and upon a Supplicavit out of the Chancery, shall give (") no furety but promise only upon his "Lambard Honor; A Defendant shall not have a day of gr. Grace (w) given him against a Lord of Parlia- w 27 E. 3. ment, because he is supposed to attend the af- 27 H. 8.27. fairs of the publick: a Baron shall not answer upon Oath to a Bill in Chancery or Equity but upon protestation of Honor, nor in a verdict upon a Tryal by Peers, for faith Crompton, the x Crompton Law makes fo much account of the word of a Jurisdiction Peer of the Realm (x) when he speaks upon 1 H. 4.1. his honor, though it be in Case, or upon Tryal Stamford. Mmm tor 152.

for life as it shall be believed, a Baron shall not have a writ of Subpana directed unto him, but y 21 E.3 39. a Letter under the Hand and Seal of the Lord 43 E. 3. 33. Chancellor or Lord Keeper of the great Scal of England; is not to be arrested or outlawed for Debt (7) or any other personal action not 8 R. 2. criminal, there being two Reasons, faith our 7 H. 4. Law, why the person of a Lord should not be 11 H. 4. 15. arrested or outlawed for Debt or Trespass; the 1 H. 5. 14. 14 H. 6. 2. one in respect of his dignity, and the other in re-22 H.6.226. spect that the law presumes that they have (2) fuf-27 H. 8.27. ficient lands and tenements by which they may Countee de be distreined, in the Long writ called the Prero-Salops cafe. gative Writ iffuing out of the Exchequer to di-Cokes 9. streine the lands and goods of the Kings debtors, Report 49. z Countels of or in default thereof to attach their bodies; Rutlands. there is an express exception of Magnatum docafe. Cokes minorum (a) & dominarum of the Nobility and 6 Reports their Ladies; and the Office of Count or Earl 51.8 53.8 was of great trust and confidence for two pur-3.H.6 48. a Vernons poses, the first, ad consulendum Regi (b) tempore consideratipacis, to councel, affift and advise the King for ons for reguthe Weale publick in time of peace; and the lating of the second ad defendendum Regem & patriam tempore court of Excase Cokes 7 belli, to defend their King and Country in time chequer. 18. Rep. 34. Dier of War, and by their power, prowels and valour, guard the Realm; both which are the proper bufiness of the Barons and the other Nobili-20 Eliz 360 ty as well as the Earls, and invaction of Debt, Coke 2 part Detinue or Trespass, or in any other acti-on reall or personal brought or commenced Inflit.cap 2. c. 13 E. 3. Jurisdiction for or against (e) any of the Nobility, Dier 107 6 two des courts.

(451)

two Knights shall be impannelled on the Jury with other men of worth, and by a late necesfary and honorable care of the late Lord Chancellor and Master of the Rolls; no Original Writ against any of the Nobility in a subsequent Term is permitted to be antedated or to take benefit of a precedent as is now commonly used against such as are not of the Peerage or Nobility: Mr. Selden giving us the Rule, that tenere de Rege in Capite & per Baroniam to hold of the King in Capite (d) and to have lands holden d Selden in. by Barony, and to be a Baron, are one and the bonor. 704. fame thing; and Synonymies, and not a few of 2 part ca. 5. our antient Writers and Memorialls have un- comment. derstood the word Baronia to fignific an Earldom, fuger Little or the lands appertaining thereunto, which may ton 58. make it to be more then conjectural that it is their dignity, fervice (e) and attendance upon the e Dugdale I King and Weal publick, more then any suppo- part Monafition of their great Estates sufficient to be di- sticon Anglic streined, which hath founded and continued those just and warrantable liberties and priviledges unto them tam tacito omnium confensu usuque longavo derived and come down unto us aswell from antiquity the law of Nations, and the civil and Imperial laws, which were no ftrangers unto us above 400 years after the comeing of our bleffed Saviour Christ Telm into the field for when Eminian the great civil Lawyer (f) f Seldeni diffate upon the Tribunal at rock-feven years toge- fertatio ad ther, whilst the Emperer Severus kept his Court, \$ 3. 0 ca.5. and was there Refident, wherein are only to \$ 1.0 3. Mmm 2 ila ma

Fletam ca.4.

be found the Original (g) of many honorable rational and laudable customes of honour and Majesty, used not only in England, but all the Christian Kingdomes and Provinces of Europe-; quam Regni Anglia Institutis latisque qua in Juris ne ceffitatemque vigorem jam din transit, as our common and Municipal laws and Reasonable customes of England necessarily to be obferved, for if it could be otherwise, or grounded only upon their fufficiencies of Estate whereby to be diffreined, every Rich Man or good Freeholder which differ as much from our Nobility, as the Hombre's Rico's, rich men without priviledges do in Spain from the Rico's Hombre's (h) dignified, and rich men might challenge as great . 2.ca. 4. a freedom from arrefts; especially when our laws do allow an action upon the case against a Sheriff, or other which shall make a false Retorne. that a Freeholder hath nothing to be diffreined when he hath estate sufficient, whereby to be fummoned or distreined, but it neither is nor can be so in the case of our Nobility and Baronage who are in times of Parliament to be protected by their Dignities, and the high concernments of Parliamentary affairs from any molectation or diflurbance by any Writs or Processe either in their Persons or Estates, and are by some condiscention and custome in favour to such as may have canfe of action against them in the vacancy of Parliaments and when their priviledge of Parliament ceafeth, become liable to the Kings Writs or Processe, yet not by any Processe of arerft

h Selden tit. Sect. 4

arrest or imprisoning of their persons, but by Writs of Summons, Pone per vades & Salvos, taking some Pledge or Cattle, that they shall appear, and Distringes to distrein them by their Lands, Tenements, Goods and Chattels, untill they do appear and answer to the action, that which is retorned or levied thereupon being norretorned into the Exchequer or forfeit to the King if they do appear in any reasonable time unto which priviledge of Process the Bishops of Empland and Wales holding by Barony, may justly claim or deserve to be admitted, when as the Metropolitans having an Estate for life in their Bishopricks and Baronies, ought not to have a Nibil habet retorned against in their several Provinces, nor the Suffragan Bishops in their Diocesses nor have their dignities subjected to the violence of Arrests or fordid usage of prisons; hindering the execution of their facred Offices in the Government and daily occasions of the Church of God: neither are any of the Baronage or Bishops of England to be (i) distreined Register of in their Journeys, per equitaturam, by their Writs 100.be Horses or Equipage, for any Debt, or upon any other personal action whilft they have any other Goods or Chattels whereby to be diffreined.

So as if any of the Temporal Baronage of England holding their Earldomes or Baronies in Fee or Fee Tail or for Life should by the prodigality of themselves or their Ancestors or by misfortunes, troubles or viciffitudes of times as too many have been fince their honors have not been

(as if rightly understood they ought to be) accounted feudall, and the Lands thereunto belonging as the lands of the Bishops and spiritual Barons unalienable be reduced to a weak or small Estate in lands, or should have none as John afterwards King of England, a younger fon of King Henry the Second was: who untill his father had conferred some honors and lands upon him was called Jean Sans terre, John without land, yet they having a Freehold in their honors and dignities, and the Dukes, Marquelfes, Earles and Viscounts of England having at their Creations some support of honor, by way of Penfion or Annuity, yearly paid unto them by the King and his Heirs and Successors annexed thereunto, and not to be severed from it: The antient Earles having the third peny, or part of the Fines and Amercements due to the King out of the Counties, of which they were Earles afterwards about the Raigne of King John reduced (k) to 20 Markes per annum, as all the later Earles and Viscounts now have, and the Dukes and Marquesses a greater yearly annuity or Creation mony, as 40 Marks or 40 l. per an. And all the Nobility and Baronage of England having befides a Freehold in their honors and dignities and their houses nobly furnished, some of them having above 20 thousand pounds per an. lands of Inheritance many above 10, others 7, 6, 5, 4. or 3, thousand pounds per annum lands of Inheritance in Taile, or for Life, and none unless it be one or two whose missortunes have brought

k Selden 2 part. tit. honor 637. ca 5. S. 7. ro. liberat. 2. Regis Jo-

banis in 3.

brought their Estates for Life or Inheritance fomething under one thousand pound per annum. There can be neither ground or reason for any Sheriff upon any the aforesaid Writs awarded or made against any of them to retorne, Quod nihil habet per quod summoniri possiit, that he had nothing whereby to be fummoned attached or distreined, and if that could as it cannot rationally be truly or legally done, yet the Judges fworn unto the observance of the laws, and to do Justice unto all forts of people cannot in any of their Courts award or cause Writs or Process of Capias against them to arrest or imprison their bodies upon any action of debt or other perfonal actions not criminal which makes an impossibility for any of them in civil actions to be outlawed.

And if they had neither Creation, mony nor Lands, Goods or Chattels, which is neither rationally or probably to be either imagined or beleived, yet they are not to be denied those honorable priviledge fo antiently and by the laws of nations belonging to their high calling and dignities, when as the antient Charters or Creations of Earls (those later of some of our Dukes, Marqueffes, Viscounts and Barons having words and clauses amounting to as much) do grant them as in that antient one by King Henry the fecond to Earle Aberick or Albercius de tere of the Earl- | Selden tit. dome of Oxenfordscyre their honors ita libere quiete honor 651, & (1) honorifice ficut aliquis comitum Anglia liberius 652. 2 part quetins & honarificientius habet as freely and ho- ca. 5. Sect. norably 10.

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dome as that grant of the fame King to William d' Abbiney of the Earldome of Arundell, cum omnibus libertatibus & liberis consuetudinibus predicto honori pertinentibus, with all the liberties and free customes to the faid honour appertaining m Pat. 5. E. that of later (m) granted to the Earl of Pem-6 in 4. Sel- broke by King Edward the 6th of the Earldome den tis honor of Pembroke, cum omnibus & fingulis praheminen-664. 2 part. tiis honori Comitis pertinentibus, With all preheminencies and honors belonging to the honour and dignity of an Earl, Et babere fedem locum & vocem (as all the grants and Creations of the later Earles do now allow and import) in Parliamentis publicis Comitiis & Confilis nostrorum haredum & successorum infra regnum Angliis inter alios Comites, at to have place vote or fuffrage in the Parliaments or Councells of the King his heirs or fuccessors amongst the Earles within the Kingdome of England, nec non uti & gandere omnibus & singulis Juribus privilegiis praheminentiis & immunitatibus statui comitis in omnibus rite & de I're pertinentibus quibus cateri comites Regni Anglie ante hac tempora melius honorificentius quietius & liberius ufi & gavifi funt as likewise to use and enjoy all and fingular rights, priviledges, immunities and preheminencies to the degree and state of an Earl in every thing rightly and by law appertaining as other Earles of the Kingdome of England, best most honourably and freely have used and enjoyed, all who the aforesaid antient honorable privi-

priviledges, preheminencies, and immunities granted and allowed the Nobility and Baronage of England those Sons and Generations of merit adorned by their ancestors vertue aswell as their own and the honors which their Soveraigns have imparted unto them have been ratified by our Magna Charta so very often confirmed by several Acts of Parliament, and the Petition of Right (in and by which the properties and liberties of all the people of England are upheld and supported) and therefore the honors and dignities being personal Officiary, or relating to their fervice and attendance upon the throne and Majesty Royal, and conducing to the Honor, Welfare and fafety of the King and his people: King Henry the 6th may be thought to have been of the same opinion when the Commons in Parliament having in the 29th year of his (n) raign, n Rot. Part Petitioned him that the Duke of Sommerfet, Dut- hincu, 29. H chess of Suffolk and others may be put from a. 6. bout his person, he consented that all should depart unless they be Lords whom he could not fpare from his person.

And in Askes Rebellion in Torksbire, in the latter end of the (o) raigne of King Henry the o Lord Her-8th, the Commons complained that the King berts Historians not (although he had many about him of ry of King great Nobility) served or attended with Noble Henry the or worthy men, And also the Lords Spiritual as. eighth. 418. sembled in Parliament in the second year of the raigne of King Charles the Martyr, when they Petitioned the King against the Inconveniences

Nnn

counts and Barons of Scotland or Ireland that had neither residence nor estates in those Kingdomes did amongst other things alledge that it was a Shame to nobility that such persons dignified with the titles of Barons Viscounts, &c Should be exposed and obnoxious to arrests, they being in the view of the law no more (p) then meer Pleworths Hi- bejans, and prayed that his Majesty would take Some Course to prevent the prejudice and disparavement of the Peers and Nobility of this Kingdome who being more peculiarly under the protection of their Soveraigne in the enjoyment of their priviledges have upon any invafion thereof a more special addresse unto him for the Conservation thereof, as in the case of the Earl of Northampton, the twentieth day of June in the 13th year of the Raign of King Charles the Martyr against Edmond Cooper a Serjeant at Mace in London and William Elliot for arresting of him they were by the Lord Chamberlains warrant apprehended and committed to the Marshall and not discharged but by warrant of the Lord Chamberlain bearing date the third day of July next following, and needs not feem unufual strange or irrational, unto any who shall but observe and confult the liberties priviledges immunities and praheminencies granted and permitted unto the Nobility of many other Nations and Countries aswell now as very antiently by their Municipal and reasonable customes and the civil or Cafarean laws.

p Rush-Rorical Collections.237.

## CHAP. XVI.

That many the like priviledges and praheminences are and have been antiently by the Civil and Casarian laws and the Municipall Laws and reasonable Customes of many other Nations granted and allowed to the nobility thereof,

7 Hen as the Hebrews who thought themfelves the most antient wife and privi- a Sigonius ledged of the Sonnes of men (a) had their pinger de repub. tribuum principes & Capita qui cum Rege sedentes partim consilia mibant partim. Jus reddebant, Prin- Menochius ces of the Tribes under the King were the chief de repub. Magistrates and heads of the people attended Hebraerum the King, fate with him as his Councel lib. 1. ca. 6. and affifted him in the making of laws, of Sect. 8. which the book of God giveth plentiful evidences, Solomon had (b) his Princes, some of 23. 1. Reg. whom were fet over his household Ahab had 8.1.3. Princes of his Provinces, Jeboram King of Ifrael 2 Reg. c. 2.2 leaned upon the hand (c) of a Lord that belonged Reg. 1. 5.9. unto bim, And our Saviour Christ alludeth to the 11. 1 Para-Princes of Ifrael the Elders and Judges of the people when he (d) faith his twelve Apostles should c 2 Reg.7.v. after the Consummation of the world, fit and 2. 6 17. Judge the twelve Tribes of Israel, amongst (e) d Mar. 19.28 the Gracians the nobility derived their honors e Sigonius from their Kings and Princes and by the lawes de repub. Aof Solon and the ten Tables were alwaies di-themenfium. stinguished from the Common people and had 64. 1.2.6.5 Nnn 2

Hebraorum ca. 5. 0 6. 2 Sam. 23. b 1 Reg 4. 2. f Coke 1. part Institutes. vel comment Inp. Littleton tit. Knight fervice Sest. 107.0 108 g Valentius Fostevus in Hift. Furis Civilis Rom. lib. 3.ca. 12. 480.

h Nolden de

15 Sect. 5.

& 7. Cuia-

ment. ad lib.

12. Cod, 74-

Stiniani tit.

WALKS.

cius com:

other Nations, who live under Monarchs have been favoured and endowed therewith, the old Roman Nobility refused to marry with the Ignoble (as those of Denmark and Germany do now which our English descended from the later, did so much approve of as they accompted it to be a disparagement to all the rest of the Family and Kindred to marry with Citizens or people of (f) mean Extractions) Julius Cafar when he feafted the Patricii or Nobility and the common people entertained the Nobility in one part of his Palace, and the Common people in another, (and not denied some part of it even in the Venetian and Dutch Republick) as amongst many other not here ennumerated, Nobilis (g) minus suut puniendi quam ignobilis, Noble men are not to be so severely punished as ignoble, Nobiles propter debitum Civile vel ex causa aris alieni non debent realiter citari vel in Carcerem duci, are not for debts or moneys owing to be arrested or imprisoned propter furtum vel aliud crimen suspendio dignum laquei supplicio non sunt plectendi, are not for Statu nobili- Theft or any other Crime to be hanged um civili.ca. and that priviledge fo much allowed and infifted upon in the Republick or Commommon wealth of Genoar in the height of their envy or dislike of their (b) Nobility, as they did about the year of our Saviour 1220 displace the learned Jacobus Baldwinus a Doctor of the Civil Law, and re-

1. d.l. 2. Cod. moved him from his place of Prator or Lord Chief & nemo pri- Justice into which they had elected him for

that

that he had caused a Noble man to be hanged when as latrio Statuto strangulationis ignominia eximuntur nobiles, a Noble man was by their Laws not to be put to death in so ignominious a manner and thereupon enacted by a Law, that from thenceforth no Doctor of Law should be admitted into the Office or place of Frator, Hifpanus nobilis jure Regio Hispaniarum ex Nobilitatis privilegio in Carcerem mitti non potest nec in ipfius (i) armis & equo recte fit executio, A Spanish i Nolden de Noblemen is not by the Kingly law and Prero- Statu nobiligative of the King of Spain and the priviledge Synopsis of his nobility to be imprisoned or his Arms Brast ca. 12 or Horse taken in Execution; by the Laws of Sect. 2.3.5. Poland and of Flanders a Noble man is not to be imprisoned but taken into custody by the Magistrate or Judge in their houses, or confined to fome City or place, until the debt demanded or Action be satisfied, or by plea discharged in depositionibus attestationibus & testimoniis ferendis magis creditur Nobilibus quam Ignobilibus, in attestations or testimonies, Noble men are more to be credited then ignoble, ac etiam cum de illorum re agitur, even when it is in their ans-Iwers or own concernments, ad officia secularia k Gratian magis quam plebei assumuntur are sooner to be tom 2 dispreferred to fecular Offices and imployments cept. for. ca. then fuch as are ignoble, reverenter funt falutandi nzus in Caare to be reverently faluted ad omnem occursum il- talog gloria lis asurgendum caput revelandum de (k) via de- mundi Fr. cedendum Ge. men are to rife unto them at their Marci. deorf coming towards them: uncover their heads, or Delph 806.

um Civili

give n II. tom. I.

I Bonfin lib. 7 Chronic. Hungar. 4 Schrader conf. 3. n 197. vol. 1.

give them wey or place, for in doing them honour the Prince or King that gave them the honour is honoured, Si in judicus comparent Index (1) (qui in Hungaria in causis nobilium non nisi nobilis) eos salutare & ad sedendum: aliquo humiliori loco iuvitari debet, if he appear in any Court of Justice the Judge (who in Hungary in the causes of any of the Nobility is likewise

m Nolden

n Nolden Synortis tractat. de Statu nobilium civili ca. 13. Sect. 6. 1de111 304. Sect II. ca. 15. Sett. 2. o Chiacius p Nolden de Statu Kobilium Civili ca 5. Sect. 1.

to be a Noble man) is to falute them and invite them to fit in some place beneath the Tribunal, Non verbo sed in scriptis sunt citandi are (m) not to be cited by word of mouth, but de Statu No. by writing, de calumnia personaliter jurare non tebilian Civili nentur, are not to take in any action, the Oath ca. 13. 297. de Calumnia, that the action is not meerly brought in (n) malice or for contention, injuria nobilibus illata longe aliter astimatur quam ea que ignobili infertur an injury done unto them is more then to one which is ignoble, torqueri non debent, ought not to be put upon the Rack, or tortured, Offendens Confiliarium principis incurrit crimen Majestatis quando offenderetur in odium & contemptum fin (p) principis, he which hurteth or offendeth a Councellor of the Prince (our comment ad Temporal Baronage being fo in Parliament by lib. 12. Ced. Inheritance) committeth Treason if it be done in justinian. tit. hatred or contempt to the Prince. And the reafon given for the high efteem of Nobility, and those more then ordinary favours and priviledges granted and imparted unto them and the Baronace of the Empires of Rome, Germany, and many Neighbour Kingdomes are that they are de

familia Principis, (q) accompted as a part of the q Alberis Families of the Emperors and Kings, unum cum Ruland de ipso faciant corpus unum Consistorium, are as one Commissor body and incorporate inherere principi dicuntur part 1. 1. 5. ficut stella firmamento soli are faid to attend the ca. 6 n. 15. Prince, as the Stars in the firmament do the Sun, conf. 932. n. & radii solares solem, and as the Rayes or Beams 30. Nolden of the Sun do accompany it. The Emperours de Statu. No-Honorius Theodofius (r) declaring that immunita- bil. civili.ca. te digni sunt quos sui lateris comitatus illustrat, 5.79. that they which had the honour to attend and r Cujacius be near their persons deserved to be priviledg- Justiniani ed.

Poloni Nobiles cum de illorum vita & honore Petrus Graagitur non ab alio quam ipsom & Rege Judicari pos- nerius de styfint & non nist consulto principe sunt puniendi, lo regie Galthe Nobility of Foland in any matter concern-dist. olim. ing their life anp honour, are only to be tryed Salucianis by the King, and are not to be punished unless prescripto the Prince be first consulted and do approve 321. Sett. thereof. Et Barones apud Gallos non aliorum Ju- 365. 365. dicio subsisti poterant in prima instancia quam Nobilium & Seneschallorum ad quos Ideirco illorum cause maxime feudales remisse fuisse leguntur apud Jo. Tilleum recollectorum Francia regum. And the French Baronage are in the first instance to to subject to no other Court or Judgement, then that of the Nobility and Stewards (appointed by the King) and therefore their causes especially such as concerned their seudal estates or honorary possessions were as appeareth by John Tilly thither remitted, Et ab omni avo Nobilium

tit. 18.

bilium Gallia fuit spec.ale privilegium ut omnes corum cause semper effent reservate fingulari Rcgis Supremi eorum principis salvo guardia protectioni & jurisdictioni. And it was in all ages a special priviledge of the French Nobility to be under the Guard, Protection and Jurisdiction of their Soveraigne, Atque hinc Ballivorum antiqua Institutio quod illi essent & esse deberent tanquam custodes & conservatores omnium jurium & privi-[Petrus Gra- legiorum nobilibus ( ) competentium, and from thence

rigio Gallorum 359. 5. 440.0 441.

netius de stilo came that antient institution of Bailiffs (Judges or officers specially appointed) who were & ought and were to be as Guardians and confervators of all the rights and privileages appertaining to the Nobility. Et nobiles non minus privilegiati & fa-

fett. 437.

t Ibid. 338. vorabiles quam (t) familiares & domeflici principum vel Officialium, And the Nobility are there to be no less priviledged and favoured then the Servants and domestiques of the King or any of his Officers, the diftinction betwixt the Nobility and common people of all the Kingdoms and Nations of the Earth being fo universal : u 3 part Pur- As in China, (u) the Mandarines being the No-

mage. 185, 187.

chas Pilgri- bility and Governors of Provinces cannot be imprisoned but for beincus faults, have two Maces of Silver carried before them in the streets, and none are to cross the streets whilst they pass along and all men are to give way unto them; Monte. zeuma Emperor of Mexico in the West-Indies ordained that the Noblest men of his Empire Sould live in his Palace, would have none of the Plebeyans

beyans but Knights in any office in his Court, who wa partPurhad priviledge to carry Gold and (in) Silver, wear rich chas Pilgri-Cotton and use painted and gilt vessels which the com- mage 1019. mon people might not. And even the most wild and 1663. barbarous of mankind inhabiting the Earth in those Countries and places where the glimmerings of nature and civility could give any admiffion, have so every where acknowledged an honor x Le Sieur due to their nobility, as upon the Coasts of Guinee Villault in Africa, a Country(x) not at all acquainted with Voyage to learning or the more civilized Customes of Africa, Guinee in Europe or Afia: those that they take for their No- Annis 1666 bility, have a liberty which the vulgar have not, to \$1667.251 trade in every place as they please, sell and buy slaves 252. have their Drums and Trumpets play as they think good before them, and those who are advanced for any Noble Atcheivement have always the principal charges in the Army.

Nor should our Nobility or the Kings servants be debarred of any of their just rights or privileges. when as per reductionem ad principia, by a view and reflection upon the Original and causes of all those many priviledges and immunities granted or permitted by our Kings of England unto others of his Subjects and people it will appear that his own fervants in Ordinary should not be grudged that which by fo many grounds of law and right reafon, and the antient and reasonable Customes of England may be believed to belong unto them.

## €HAP. XVII:

That the Immunities and Priviledges granted and permitted by our Kings of England unto many of their People and Sabjects who were not their Servants in Ordinary do amount unto a smuch and in some more then what our Kings Servants in Ornary did or do now desire to enjoy.

Or ab hac folis luce from those or the like rays and beams of Majesty and emanations of right, reason and necessity of the Kings affairs (which notwithstanding the late groundless, mad and fond rebellious principle of seperating the Kings person from his Authority, and a pretended supremacy in the Parliament, or at the least a co-ordination, should not be diffurbed) came, and was derived that grand priviledg of the Nobility and Baronage of England, many of whom are not his Domesticks, not to be molefted in time of Parliament or forty days before the beginning of it in their coming unto it upon the Kings Summons, and as many days after the end of a Parliament in their retorn to their Habitations, (though there is no direct way or Journey from their habitations to any place in England where the Parliament is to be kept or holden, which can require so much expence of time as twenty days in travelling unto it, or twenty days in retorning home) by any Process, Writs or Summons, out of any the ordinary or extraordinary

ordinary Courts of Justice law or equity, the Baronage of England enjoying those priviledges in the 18th year of the Raign of King Edward the first which were then not newly granted or permitted, but were antient and juftly and legally to be infifted upon, as the punishment of the Prior of the holy Trinity in London, not meanly fortified with his own priviledges, and the power and protection of the Church, and that also of Bogo de Clare, who was imprisoned and fined two thousand Marks to the King, at that time a very great sum of mony, pro transgressione sibi facta for the trespass committed against the King for citing Edmond Earl of Cornwal in Westminster Hall, in the time of Parliament, to appear before the Arch-bishop of Canterbury, whose spiritual Court and Power was then very predominant, as hath been before mentioned and it appeareth in the Records of that Kings Raign; that he refused to give leave to the Master of the Temple to distrein the Bishop of St. Davids in Parliament time, for the Rent of an house held of him in London, and answered, quod non videtur ho- y Elfings anpestum quod Rex concedat tempore (y) Parliamenti sed tient & prealio tempore distringat, that it would not be just fent manner or fitting for the King to grant such a Licence of holding in time of Parliament, but at another time he England. might diffrein, and by a very antient right are to be exempted from arrest and the Ordinary Course of Process when there were no Parliaments.

The Writ of Summons directed to the Sheriffs

riffs for the Election of two Knights, the wifest and most discreet of every Shire and County of England (the County Palatine of Chefter then only excepted) and for two Burgeffes to be fent unto Parliament out of the Cities and certain Boroughs of England the King in the Parliament, being without suspition of any unwarrantable conjecture, to be rationally believed to have been first framed and sent out in K. Henry the thirds name, in the 49th year of his Raigne, by the Earls of Leicester and Gloucester, after the Battle of Lewis in Suffex wherein he and his Son Prince Edward, afterwards King Edward the first, were taken Prisoners by them and other the Rebellious Barons who had taken armes against him as my learned and worthy friend Mr. william Dugdale, Norroy King at (2) Armes, by comparing the date of those Writs, the one bearing date the 14th day of December at Worce Ster in the 49th year of the Raign of that King, and the other at Woodstock the 24th of December in the same year, to meet at London on the Octaves of St. Hillary then next enfuing, with the day or time of that Battle, and that Kings imprisonment hath after it had for fo many Ages past, escaped the Industry, Inquiries, Observations and Pens of all other our English Writers, Annalists, Chronicles & Antiquaries, very judiciously and ingeniously obferved, which Summons of the Commons to Para Vid. Prynns liament doth not, faith (a) Mr. William Prynn, appear to have been put in Execution, untill about the 23th. year of the Raign of King Edward the

z Dugdales Origines Turidicial. 13. Ø 18.

Register of Parliament Writs.

the (b) first, whence by Regal Indulgencies and no b Vide Innate or Inherent right of their own, but ab hoc Prynns Refonte, from the same spring and sountain of the gister of Parattendance and affairs of the King, proceeded Writs. the priviledges of Parliament for the Members of the house of Commons in Parliament, to be free from actions at Law or Pleas in time of Parliament, as Early as the raign of King Edward c Rot. class. the second, when he fent his Writ or (c) Proclama - 8 E.2 m 22. tion to the Justices of Affize in all the Counties of 33. in England to superfede all actions against the Ba- dorfo. rons and others summoned to Parliament.

In the 11th year of the raign of King Richard the fecond, upon a riot and trespass committed upon the Lands, Goods, Servants, and Tenants of Sir John Derwintwater chosen to (d) be a Member of Parliament for the County of Cumberland, d Prynns Aa Comission was granted by that King under the nimadversigreat Seal of England to Henry de Percy Earl of ons upon Northumberland to inquire by a Jury of the of the Initi-County of Westmerland concerning the same, and tutes and adto cause to be arrested and taken, all that should ditional Apbe found guilty thereof, and to appear pendix. 332; before the King and his Councell wherefoever he should be 15 days after the Michaelmass then next enfuing.

In the fifth year of the Raign of King Henby the fourth, the Commons in (e) Parliament al- e Rot. Parl. ledging that whereas according to to the Cuftome 5 H. 4. m.7. of the Realm, the Lords, Knights, Citizens and Burgesses coming to Parliament at his Command,

Cokes 4 part

and there flaying and in retorning to their Countrys, ought with their men and their fervants with them to be under his special protection and defence and ought not for any debt trespass or other contract what seever to be arrested, or any way imprisoned in the mean time; And that many fuch men comming to Parliament with their men and Servants, have been during the time of Parliament arrested by them who had full knowledge that they so arrested by them were of the Parliament in contempt of his Majesty, great dammage of the party and delay of the business of the Parliament, did Petition the King to establish that if any hereafter do arrest any such man comming to the Parliament, as aforesaid, or any of their men or servants or any thing attempt, contrary to the Said Custome, he Should make fine and ransome to the King, and render treble dammages to the party grieved.

f Aurea Bulla in Archiv. Electoris Palatini edit, per Marquardum Freberum: ca. 1.6-12.

Which was no more than what the Aurea Bulla, or (f) Golden Bull, confirmed by Charles the 4th Emperor of Germany in his Edict touching the seven Electors of the Empire, and the manner of their election of the Emperors bearing date in January 1256 did ordain that the said Electors or their deputies or Embassadors in their going to Frankfort upon the Main, tarrying and retorne from thence should with 200 Horse attending each Elector, be freed from all injuries, molestations, process or arrests, and in their going and retorn have the like, and a safe conduct with the like freedome and priviledge as they passed through

each of the other Electors Territories and the like in their meetings or assemblies at the Comitia, Diets or Parliaments of the Empire and should have their provisions and necessaries at reasonable rates, and that those that should molest them in their persons or Estates, should be proscribed and banished and forfeit their lands and estates, And it appeared to be fo reasonable to the French, as before the Ordinance of Moulins, which was made and verified by themselves in Parliament, which provided that the Counsellors, Judges or Senators, in the Courts of Parliament might be arrested for debt after four moneths legal notice or Summon did ad adjudge that it belonged not to a Subalterne or inferiour Judge, ordonner contre la personne d'un Senateur personne privilegie que les Senateurs partem corporis principis, faciebant, to award process against a Senator being a person priviledged, that the Senators were a part of the body (politique) of the Prince Qu'il estoit honteux voir en prison ceux qui en un momeat, se pouvoyent seoir an senat, that it would be a shame to see a Senator in Prison which might shortly after fit in the Senate, that as their wages were priviledged from being arrested for g Lovet a Debt, fo where their persons Que (g) les Rayons, recueil d'Aude ceste Souverainete (du Roy) ne se ponvoient se cums notaparer d'aves eux, that the Rayes of the Kings ble arrests Soveraignty could not be separated from them. ment de Parle-Those or the like Protections, privileges & immuni- ris ca. 31. ties being in England accompted& beleived to be fo

necessary to the fervice and affairs of the King and the weal publick, as in the same year and Parliament, the Commons did Petition the King, that whereas All the Lords Knights, CitiZens and h 5 H.4. rot. Burgeffes and their (h) fervants coming to Pariiament

Tarl in 78. by the Kings Writ are in comming staying and retorning under his protection Royal, and that many mischiefs and impeachments do often happen unto the faid Lords Knights Citizens and Burgefles, and their menial servants at those times as by Murther, Maims, and Batteries by people lying in wait or otherwise, for which due remedy is not yet provided, and that namely and particularly in this Parliament an horrible Battery and Mischeif was committed upon Richard Chedder Efq; who came to the Parliament with Sr. Thomas Brook, Knight, one of the Knights for the County of Somerfet, and Manial with him by John Sallage, otherwise called John Savage, whereby the faid Richard Chedder was imblemished and maimed to the peril of death, that he would please to ordain upon that matter sufficient remedy, and for other fuch causes semblable, so as the punishment of him might give example and terror unto others not to commit the like mischeifs in time to come. that is to fay, If any man shall kill or murther any that is come under the Kings Protection to Parliament that it be adjudged Treason, and if any do maim or disfigure any fuch coming under the Kings Protection, that he lose his hand, and if any do affault or beat any such so come, that he be imprisoned for a year, and make fine and ransome

Ransome to the King, and that it would please the King of his special grace hereafter to abstain from Chartere of pardon, in such cases, unless that the

parties be fully agreed,

Upon which they obtained an Act of Parliament, and a Proclamation, that the faid John Savage should appear, and render himself into the Kings Bench within a (i) quarter of a year after, and i Elfings anif he did not he should pay to the party endamaged tient and double dammages to be taxed by the discretion of modern hold-the Judges of the said Bench, for the time being ing of Parthe Judges of the said Bench, for the time being liaments 150 or by Inquest if need be, and make fine and ransom at the Kings will, and that it sould be so done in

time to come in like cases.

Whereupon the faid John Savage not appearing upon the faid Proclamation, and being profecuted in the Court of Kings Bench, by the faid Richard Chedder, and convicted, and the Justices giving no full judgment therein, but fending a writ of inquiry of damages several times to the (k) She- k Trin. 7. riffs of London, who did nothing, thereupon H. 4. corans did at length upon view of his wounds and Regeros. 69. maim, not think it necessary to proceed by a Jury upon a writ of inquiry of damage, but according to their discretion did adjudge that the faid Richard Chedder should recover against the faid John Savage his damages, which were taxed at one hundred marks, and likewife taxed him to pay the double thereof being another hundred markes.

Our Statutes and acts of Parliament being then as in former times, and all along until thefe la-

Ppp

ter times usually or most commonly ushered in and introduced by Petitions to the King in Parliament, as the Parliament Rolls and Journalls. compared with the printed Statutes or acts of Parliament will abundantly testifie.

And fuch a care was taken of the confervati-

As in the 8th year of the Raigne of King Henry

on of those priviledges.

the 6th at the request of the Commons in Parliament (1) one William Larke fervant to William 18. H.6. rot. Mildred a Burgesse in Parliament for London being committed to the Fleet upon an Execution. for debt was delivered by the priviledge of the Commons House, and authority given by the King to the Chancellor, to appoint certain by Commission to apprehend him after the Parliament ended to satisfie the said Debt and Exe-

m 8 H. 6. ca. I.

0

cution.

parl.m. 57:

In the same year and Parliament, for that the prelatee and Clergy (m) of the Realm of England called to the Convocation, and their fervants and families that come with them to fach Convocation often times, and commonly be arrested molefied and inquieted, the King willing gratiously in that behalf to provide for the fecurity and quietness. of the faid Prelates and Clergy, at the Supplication of the said Prelates and Clergie and by the asfent of the great men and Commons, in Parllament affembled, did ordain and establish, that all the Clergy hereafter to be called to the Convocation by the Kiugs writ and their servants and familiars (bould for ever hereafter fully use and enjoy such liberty

or defence in coming tarrying and retorning as the great men, and commonly of the Realm of England called or to be called to the Kings Parliament, did enjoy or were wont to enjoy, or in time to come

ought to enjoy.

In the 23. and 24th year of the Raigne of that King the Commons in Farliament (n) did pray the King that every person being of the Lords n Rot. parl: or Commons House, having any affault or fray 23 & 24. made upon him being at the parliament, or H. 6. m. 40. coming or going from thence might have the like remedy, therefore as Sir Thomas Parre Knight had (which shews that in those days they did not endeavour to punish any breach of their priviledges by their own authority, but made their addresse by their petitions unto the King as their Soveraigne and Supreme for his Justice therein) To which the King answered the Statutes therefore made should be observed.

In the 28th year of the faid Kings Raigne, It was at the request of the Commons in (0) parliament, for that William Taylebois of South Lime, a Rot. parl. in the County of Lincoln Efq; would in the Par- 28. H. 6. m. liament time have flain Ralph Land County 156. liament time have flain Ralph Lord Cromwell, one of the Kings Councel in the Pallace of westminster; Enacted that the said william Taylebois should therefore be committed to the Tower of London, there to remain one year without bayle bafrom or Mainprize, and that before his delivery he should answer unto the same.

In the 14th and 15th year of the Raign of King Edward the 4th, William Hide a Burgess of

Rot. parl. 14. 6-15.E. 4. m. 54.

Parliament for the Town of Chippenham in Wilt-(bire being a (p) Prisoner upon a Writ of Capias ad Satisfaciendum obtained a Writ out of the Chancery to be delivered with a faving of the right of other men to have Execution after the Parliament ended, (notwithstanding the Precedent of Sir William Thorpe Knight, Speaker of the house of Commons in the 18th year of the Raigne of the Raigne of King Henry the 6th taken in Execution for a debt of 1000 1. at the fuit of Richard Duke of rork betwixt the adjournment and recess of that Parliament and could not be released. fo as a new Speaker was chosen in his place, which may well be conjectered to have been fo carried by the then overbearing power and influence of that Duke and his party great alliance and pretences to the Crown, which that meek and pious King was not able to refift.

For in the 17th year of the raigne of King Edmard the 4th at the petition of the Commons in Parliament the (q) King with the affent of the Lords Spiritual and Temporal granted that John Atmill a Burgels of the City of Exeter condemned in the Exchequer during the Parliament, upon eight feveral informations at the suit of John Taylor of the same Town should have as many Writs of Supersedeas as he would until his com-

ing home after the Parliament.

In the 35th year of the Raigne of King Henry the 8th. Tremyniard a Burgess of Parliament being imprisoned upon an Utlary in an action of debt upon a Capias ad satisfaciendum was deliver-

q Rot. parl.

35.

17. E. 4. m.

ed by priviledge of Parliament, allowed to be legal by the opinion of the Judges before whom that case of his imprisonment and release was afterwards debated and their reasons as hath been before remembred given for the same with which agreeth the precedent in the case of Edward Smalley a servant of Mr. Hales a member of Parliament taken in Execution in the 18th year of the Raigne of Queen Elizabeth in the Report whereof made by the Committee of Parliament for his delivery, it is said that the Said Committee found no precedent for the setting at large any person in arrest but only by writ and that by diverse precedents on (r) Record and perused by the said Com- r Elsings anmittee, it appeared that every Knight Citizen and tient end Burgesse of the house of Commons in Parliament, present manwhich doth require priviledge hathused in that case ing of Pars to take a corporal oath before the Lord Chancellor or liaments in Lord Keeper of the great Seal of England for the England time being that the party for whom such writ is 199, 200.0 prayed came with him to the Parliament, was his 201. fervant at the the time of the arrest made, whereupon Mr. Hale was directed by the house of Commons to make an oath before the Lord Keeper as aforesaid, and to procure a warrant for a Writ of priviledge for his faid fervant, howbeit the Lords in Parliament did in the Raigne of Queen Elizabeth usually of their own authority deliver their Servants out of Execution, if arrested in Parliament time.

In the 27th year of her Raigne, a Member of the house of Commons having been served with

ner of hold-

Writ of Subpana issuing out of the Chancery, and the house fignifying to the Lord Keeper that it was against their priviledge (f) he retorned f Fournal of answer, that he could not submit to any opinion the House of Commons in of the house concerning their priviledges, except those priviledges were allowed in Chan-Parliament.

cery and would not recall the Subpana.

With which accordeth Mr. VVilliam Pryn too violent an undertaker in the late times of usurpation, to affert their phantosme or feigned foveraignty whereof he was then and fince his Majesties happy restoration untill his death, a member who having by the keeping of the Records in the Tower of London, found the way to a better weighed and more fober confideration and cause enough, if he would have well inspected himself and what he had formerly written to retract those many errors which an overhalty reading and writing had hurried him into, hath in his animadvertions (t) upon Sir Edward Cokes 4th part of his Inflitutes declared, that the house of Commons in Parliament had untill the later end of the last Century assumed no Jurisdiction to them-Telves or their committee of priviledges to punish breaches of priviledoes but onely complained thereof to the King or the Lords in Parliament.

And therefore King James in an answer to a Petition of the Home of Commons in Parliament in Anno Dom. 1622, was not in an error, when he faid, that although we cannot allow of the stile calling your priviledges your antient and undoubted rights and inheritance, but could rather have wilbed

t Pryns Animadversions upon Cokes 41h part Inititutes.

27. Eliz.

wished that you had said that your priviledges were derived from the grace or permission of our Ancestors and us, for most of them were from precedents, which shews rather a tolleration then inheritance, yet we are pleased to give you our royal assurance, that as long as you contain your selves (a) within the limits of your duty we will be as careful to maintain and preserve your lawful liber- u Rushties and priviledges as ever any of our predecessors worths Hiwere, may as to preferve our own Royal Preroga- storical Coltive.

lections. 527

Et ab hac radice Regalitatis & recta Rationis, And from that root of Regality and right reason, only Foundation and Original, though Sir Edward Coke is willing to mistake it when he would have it to flow from a respect only due to Justice and the Courts thereof have proceeded the great reverence and awe due unto the Superior Courts of Justice at VVestminster Hall, (for leffer or inferiour Courts do neither deferve nor claim it) when the Judges do fit there in their feveral Superior Courts under the Shadow and protection of the Royal Oak.

Whence also came that very necessary custom and usage, to be bare, uncovered, and respectful in their words and behaviour to one another in the Judges presence, as well as unto the Judges themselves, and from whence, and the reflex of Supreme authority, have the Judges power to fine or imprison such as mis-behave themselves therein as in the case of VVilliam Botesford, fined to pay two Marks, by the Juffices of the Court of Kings

Bench.

w Pasch, 10. E.3. Lincolne Rot. 59.

x North. Rot. 7.

Bench, for threatning to kill one Hawis Gaygold, for profecuting him in an action of trespals (w) and using those Menaces in aula placitorum in presentia Justic. ipsius Regis & Curia sua contemptum in VVestminster Hall, in the presence of the Kings Justices, and in contempt of the Court, and was committed to the Marshall, and that at an Affize holden at Northampton(x) in the third year of the affize. 3.E 3 Raign of King Edward the third, John Blundell was attached, ad Respondend tam domino Regi quam Willielmo de Towcester Attorn: Thoma Comitis Mariscalli Anglia de placito quare insultum fecit Super ipsum in domini Regis & curia contemptum, & per verba contumeliosa ipsum vili pendebat in retardationem prosecutiones negotiorum pradict, comitis & aliorum, to answer aswell unto the King as William of Towcester Attorny for the Earle Marshall of Eugland wherefore he made an affault upon him in contempt of the King and his Court, and did with many scandalous words revile him to the disturbance of the business of the faid Earle and others. Super quo Juratores de con-Sensu partium pradict. instanti die transgressionis impanellat whereupon a Tury being the same day of the trespals and offence by the consent of both parties impannelled, the Jury found that the faid John Blundell was guilty, and he was committed to prison, & fecit finem domino Regi per dimid. Marca per pleg' &c. qui manuceper: quod bene se gereret & pacifice versus predictum VVillielm. & alios quoscunque, and was fined to pay half a Mark to the King, and gave bayl for his good behaviour

towards the faid william and all others.

And whence all the Judges are impowred to free fuch as are arrested in the face or fight of the Court, though it be upon process granted by themselves or any other Court in the Kings name, or upon the most just and legal action, as likewise to aggravate or make the punishment greater for offences done in the face or contempt of the Court, and that all such misdemeanors are in Indicaments or Writs, brought or commenced upon them said to be in contemptum domini Regis & curia sue, in contempt of the King and his Court, from which or the like ground or reason came also that great honor, respect and care of Judges in the fuperiour Courts, by the Statute of the 25th year of the Raigne of King Edward the third, which makes it to be high Treason to kill any of them, with a forfeiture of all their lands and estates (y) as in case of Treason com- y 25 E.3.ca. mitted against the King, and no less then mis- 2. prision of Treason for any to draw a Weapon upon any Judge or Justice fitting in the Courts of Chancery, Exchequer, Kings Bench, Common Pleas, or upon Justices of Affize or Justice of Over and Terminer, although the party offending do not strike, for which he shall lose his right hand, all his goods, fuffer imprisonment and forfeit his Lands during his life; and no less a punishment for rescuing a prisoner in or before any of the Courts, committed by any of the Judges, or arrested by any of their Writs Mandates or Process, the no small punishments in-299

z Pasch. 10. E. 3. coram Rege. Trin. ge. Ret. 160.

flicted for abusing of Jurors, or for beating (2) a Clerk in vemendo versus euriam. in his way to one of those Superior Courts where he was imployed, or for threatning a Counceller 19. E. 3. & at law for acting or pleading for his Client, the Hill. 20. E. priviledge of the Barons Officers and Clerks of 3. coram Re- the Exchequer, granted or allowed by King Henry the First, and to this day not to be denied them, not to pay Toll or Custome for any thing they shall buy for there necessary uses or occasions, nor to be compelled to appear at Hundred Courts, Affizes or Seffions (which the Officers, Clerks and Ministers of the other Superior Courts are likewise indulged) nor to bear Offices in the parish wherein they live, as Constable Church-Warden, &c. either in the Vacations or Term Times, and that the Barons of the Exchequer, Et omnes alii ministri ibidem ministrantes sive de clero fint five Regie Cur. qui assident, as the words. of their Writs of priviledge are, (which exempts. fuch of the Clergy from the dominering power in those dayes of the Ecclesiastical Court ) ex mandato ad alias quafirbet (a) causas extra Scaccarium sub quibusounque Judicibus & vero Judice sub quo lis mota fuerit sive sit Ecclesiastious sive Secularis. non evocentur, & si forte vocati fuerunt ratione regia potestatis publica authoritate tam ex dignitate Regia quam consuetudine antiqua excusantur. and all the Officers Clerks and Ministers fitting in that Court, or attending therein by the Kings command, shall not be constrained to appear or attend upon any causes, actions or suits against. them

2 Forma brevis de privileg. officiar' et clericorum Scaccarii domini Regis nune usitat' Sub magno Sigille Scaccaria vide librum ingrum dicti. Scaccarii.

them before any Judges whatfoever, whether Ecclefiaftical or Secular, and if they be cited or called before fuch Judges by reason of any of the Kings Writs or Process, are aswell in respect of the Kings Royal Dignity, as also by antient custome to be excused the Writs of priviledge granted unto them where they are profecuted in any other Court, Pleas, or actions concerning freehold appeal, or felony only excepted, mentioning as they do in case of priviledge of the Courts of Chancery, Kings Bench and Common Pleas, that if the Plaintiffs have any cause of action except as is before excepted, they may if they please profecute or bring their actions or complaints against fuch priviledge person in the Court where he is attendant.

From which Royal Fountain and Original, and the care of publick preservation flowed or was neceffitated that priviledge now and heretofore allowed to the Kings Guards, both Horse and Foot, Garrisons and Commanders of Castles, Towns or Forts, and was believed to be necessary in the time of Justinian the Emperor, Qui statuit milites convenivi tam in causis Civilibus quam Criminalibus coram ducibus suis & quod miles nist a suo judice coerceri b In 1 fin. non possit, that Soldiers should be cited and try- cum suis de ed aswell in causes civil as criminal before their remilie. 1.b. Captains or (b) Commanders. And that a Soldier 12. C. tit. should not be compelled to appear before any o- 36. Gregother, which was not in that time any new Edia rius Tholoor Ordinance, but a Declaration of an antient ca. 13. 1.& law and custome in use amongst the Romans 2.

fanus lib.17.

in the Infancy of their mighty Monarchy some hundred of years before the birth of our Redeemer as may be evidenced by Juvenal, and what was in use and practise and accompted to be of antient institution in his time, which was not long after. the birth of our Saviour, when he faith,

c Tuvenal Satir. 16. Legibus antiquis Caftierum & more Camilli-Servato miles (c) ne vallum litiget extra Et procula Signis, justissima Centuriorum Cognitio est igitur de milite,

By antient laws and customes sacred held By great Camillus, Soldiers were not to be com-(pel'd

To appear in Courts of Justice, but in the Campe (to abide.

And by their own Commanders to be try'd.

And from the like causes and considerations of the Kings fervice and falety of the Kingdome are allowed by our reasonable laws and customes, the priviledges and franchifes of the Cinque Ports, that Cin que Perts the Inhabitants within the liberties thereof do fue, and are only to be fued in the courts thereof, and the Kings ordinary Writs and Process do not run or are of any avail therein, and fuch as are in certain special cases are only to be directed to the Constable of the Castle of Dover and the Warden of the Cinque Ports and those franchises were fo allowable by law, as the Abbot of Feversbam in his time a man of great power and authority,

d Coke 4. part of the

Inflitates ca. 42.

authority, and armed with many and great priviledges of his own, both Spiritual and Temporal, being imprisoned by the warden of the Cinque Ports for an offence committed therein, for which the Arch-bilhop of Canterbury citing the Kings Officers there into his Erclenaftical Court, the Record faith, Quia secundum consuetudinem regni approbatam & ratione juris Regis mini steri Regis pro aliquibus que fecerunt ratione officii trahi non debeant (e) Rex prohibuit Archiepiscopo Cantuar. ne e Hill. 18.E. volestari faciat ministres suos Dover de eo quod Ab- 1. batem de Feversbam pro delicto sno incarcerassent per considerationem Curia quinque portuum de Shepway, in regard that by the custome of the Kingdome approved, and the right and prerogative of the King, the Kings Officers are not to be compelled to appear (in other Courts,) the King prohibited the Arch-bishop of Canterbury that he should not molest or trouble his Officers (or fervants) at Dover, for that by a judgement of the Court of the Cinque Ports holden at Shepwey, they had imprisoned the Abbot of Feversham, for an offence by him committed.

From the like causes and confiderations of the Kings fervice and good of his household and fervants, the multitude, of tenants heretofore of the Antient Demesnes of the Crown, which were in the hands of King Edward the confessor Demesne, or William the Conqueror, for that as Sir Edward Coke faith, they plowed the Kings Demesnes of his Maners, fowed the same, mowed his Hey, and did other services of Husbandry for the suf-

tenance

f Cokes 4th part Institutes. ca. 58.

tenance of the King and his (f) honorable household to the end that they might the better apply themselves to their labors for the profit of the King, had the priviledge that they should not be impleaded in any other of the Kings Courts for any their lands or in actions of accompt, Replevin ejectione firma Writs of Mesne and the like, where by common intendment the realty or title of lands may come in question, are to be free and quit from all manner of Tolls in Fairs and Markets for all things concerning their husbandry and sustenance, of Taxes and Tallages by Parliaments, unless the Tenants in Antient Demesne be specially named; of contributions to the expences of the Knights of the Shire for the Parliament, and if they be feverally distreined for other services, they may all for faving of charges joyne in a Writ of Monstraverunt, albeit they be several Tenants, and where

g LL Guliel. they recover in any action, (g) are by the Laws Conquestor. of william the Conqueror, to bave double costs and

damages.

From which Spring and fountain of priviledges in relation only to and for the concern of the Prince, and Son and Heir apperant of the King of England and his revenue hath been derived those of the Court of Stanneries, or jurisdiction over the Tyu Mines where by the opinion of Sir VVilliam Cordell Knight, Mafter of the Rolls, Sir 7 ames Dier Knight, Cheif Justice of the Court of Common Pleas, and Justice weston, no Writ of Errof lyeth upon any judgment in that Court, and by an act of Parliament made in the 50th year MILE !

of the raigne (b) of King Edward the third, and h Cokes 4th the grant of that King, all Workmen in the part Infli-Stanneries are not to be constrained to appear be- tutes ca. 45. fore any Justice or other Officers of the King his Heirs or Successors in any plea or action arising within the Stanneries, unless it be before che warden of the Stanneries for the time being, Pleas of land, life or member only excepted, nes non recedant ab operibus suis per summonitionem aliquorum ministrorum seu heredum nostrorum nisi per summonitionem dicti custodis, and should not depart from their faid works or labors by reason of any Summons of the Officers of the King or his Heirs, unless it be by the Summons of the aforesaid Warden, were to be free as to their own goods from all Tolls, Stallage, Aides and Customes whatsoever in any (i) Towns, Havens, Fairs and Markets, i Selden 2. within the County of Devon; and that the VVar- part tit. hoden aforesaid should should have full power and nor. ca. 5. 5. authority to administer Justice to all that do or 37. should work in the Stannaries or any forreigners in and concerning any plaints trespasses contracts or actions except as is before excepted arising or happening within the Stannaries and that if any of the workmen be to be imprisoned they shall be arrested by the said warden, and kept in the prison of Lydeford, and not else where, untill according to the Law and custome of England they shall be delivered.

All which before mentioned Exemptions and Priviledges, as effects flowing and proceeding from their true and proper causes may justifie thole

those more immediate and proximate of the Kings Servants in Relation to his person, and a greater concernment more especially when so many of the people of England can be well contented to enjoy not a sew other immunities exemptions and priviledges which have had no other cause or soundation then the indulgence and savour of our Kings and Princes.

CHAP.

## CHAP XVIII.

That many of the People of England, by the grace and favour of our Kings and Princes, or a long permission, usage or prescription, do enjoy and make use of very many immunities, exemptions and priviledges, which have not had so great a cause or foundation, at those which are now claimed by the Kings Servants.

And do and may more inconvenience such part of the People which have them not, than the little trouble of asking leave, or licence to sue or prosecute at Law any of the Kings Servants, as the freedom of Copy hold Estates not long ago, three parts in sour of all the Lands in England; but now by the making and enfranchising of too many Freeholders, reduced to less than a fourth part from extents, or the incumbrances of Judgments, Statutes, or Recognizances.

Not to permit upon any one Creditors Judgment, any more than the Moiety of Free hold Lands to be extended, that old part of our English mercy to Men impoverished or indebted; which to this day and many hundred years before, hath been constantly observed, nor to seize, or take in Execution, unless for want of other Goods and Chattels, the Beasts and Cattel of their Ploughs and Carts, derived unto us from the law of Nature or Nations, or the pro-

Rrr vidence

vidence and compassion of Nebuzar-adan, the k Jer. en si. chief Marshal, or Captain of the Army (i) of v. 15. 6 16. Nebuchadrezzar King of Babylon, who when he had taken and destroyed Jerusalem, and carried away captive to Babylen many of the people of Judah and Jerufalem, left certain of the poor of the Land for Vinedreffers and for Husbandmen; and Renatus Choppinus from the reason, equity and moderation of the

de privilegiis Rusticorum lib 1. ca. 7.

Littleton

Self. 281.

Civil Law.

Or when (1) the Laws or reasonable Customs of England will not permit a Horfe to be destrained when a Man or Woman is riding upon him; an Ax in a Mans hand cutting of Wood, the Materials in m Coke fur a Weavers Shop, Garments or Cloth in a (m) Taylors Shop, Stock of Corn or Meal in a Mill or Market. or Books of a Schollar ; the many and great Franchifes, Liberties, Exemptions and Priviledges, some whereof have been already mentioned, of about fix hundred Abbies and Priories, the many Liberties and Franchises in every County and Shire of England and Wales, which if no more than five in every County one with another, would make a total of more than two hundred and fifty; and if ten amount to the number of five hundred, belides those of above fix hundred Cities and Corporations, which are not without great Priviledges, Immunities, Exemptions and Liberties, which do occasion more trouble and lofs of time by fueing out of Writs of Non omittas propter aliquam libertatem. to give power to the Sheriffs to Arrest within those Liberties, than the attendance upon a

a Lord Chamberlain, or other great Officer of the Kings Houshold, to obtain leave to Arrest any of the Kings Servants would bring upon them, those many thousand Mannors, to which are granted Court-Leets and Court-Barons, with their many other Liberties and Franchises, little Judicatories, Sace and Soke authority, and a Coercive power over their Tenants, Free and Copy-hold, and Free Warren, granted to many of those Lords of Mannors, whose Hunting and Hawking brings many times no small prejudice to their Neighbors or Tenants; the Franchises, Liberties and priviledges of the City of London, given or permitted by our Kings, that no Citizen shall be compelled to Plead, or be Sued or Profecuted at Law, out of the Walls of their City, and their Prohibitions (n) by Acts of Common of Charta H. r. Council, which do prohibit Freemen upon great de Exceptioni-Penalties, which have been severely inflitted, to Sue buca. 14. & one another out of the City, when they may have vide more at their recovery in their own Courts; and every Free- berties of man bound thereunto by Oath at their admission to London, & their Freedom : their priviledge of Leftage. to be Rot. Pat. Toll-free; of all which they buy or fell in any Mar- Trin 3 E. 3. ket or Fair of the Kingdom: are not to be constrain- coram Rege ed to go to War out of the City, or farther than from Rot. 113. whence they may return at Night, that none but fuch as arc free of the City shall Work or Trade with- o Bracton lib. 5. de Exin it, or the large extended Liberties within the cir- ceptionibus cumference thereof: That of the City of Norwich ca. 14. Pafch. to have the like Liberties as London; the Liber- 18 E. 2. (4cies of the City of Canterbury, (o) City of Win- Rot. 88,

chefter. Rrr 2

chefter, and Towns of Southampton and Derby, not to be impleaded out of their Cities or Corporations: That of the Hospitallers and Knight-Templers (and many others, faith Bracton) not to be impleaded but before the King or his Chief Inflice: That of the Univerfity of Oxford, That no Schollar, Servant, or Officer to any Colledge or Hall in the University, or to the Said University belonging, shall be Arrested within the City, or the Verge or Circumference thereof, extending from the faid University and Town of Oxford, Ab orientali parte ejusdem Ville usque ad Hospitalem Santi Bartholomei, juxta Oxon, & ab occidentali Trin. 2 H. 4. parte ejusdem Ville usque (p) ad Villam de Botelge, Rot. 13. & G a parte Boreali ejus dem Villa usque ad pontem vocat Godstow Bridge, & ab australi parte ejusdem Ville ufque ad quendam Boscum vocat Bagley, & sic in circuitu per Loca predicta & quemlibet locum corundem in perpetuum, From the East part of the faid Town unto the Hospital of St. Bartholomew near Oxford, and from the West part of the said Town to the Village of Botely, and from the North part of the faid Town of Oxford to Godflow Bridge, and from the South part of the faid Town of Oxford to a certain Wood called Bagley, and in the circumference of the faid City and University, extending unto all the Places aforesaid, and every of the said Places for ever, but by Process or Mandate of the Chanceller of the University of Oxford, or if profecuted or impleaded in the High Court of Chancery, or in the Court of Kings-Bench (where the Party profecu-

Sr. Isaac Wakes Rex. Blatonicus.

profecuting hath been a Sub-Marshal of the faid Court, and a Commissary of the Chancellor of that University) hath been Indicted forbeating of him, or in any of the other Courts of Julice at Westminster, or any other Court of the Kingdom, do by their Certificate under their half Seal. as it is called, that the Defendant is a Scholler, or belonging to the University, or some Hall or Colledge therein, demand and obtain Cognizance of the Adion: which with other of that famous Universities Priviledges were in the thirteenth Year of the Reign of Queen Elizabeth, confirmed (9) by Act of Parliament, that of the Uni- 9 13 Eliz. versity of Cambridge, (r) being not without I Rot Parl those, or the like franchises, priviledges, and im- 58, 59. 6 munities, against which, or many more of the & R. .. M. It. like nature, which might be here recited, there ought not to be any murmure or repining, as there never was, or but feldom or very little, by alledging any prejudice, lofs, or inconveniences, which some have sustained thereby, or may happen to particular Men by any of those or the like Franchifes, Immunities, or Priviledges, which are not to fland in the way, or obstruct the Rights of those to whom they were indulged or granted.

GHAP.

## CHAP. XIX.

That those many other Immunities and Priviledges have neither been abolifted, or so much as murmured at by those that have yielded an assent and obedience thereunto, although they have at some times, and upon some accasions received some loss damage or inconveniences thereby.

Or the Law which hath allowed them to be good and warrantable, could not but apprehend, that a possibility of loss and prejudice would come to others by them, and our Kings and Princes did by their Laws bear a greater respect, and took a greater care of the whole than of the less, or of any parts of the f Coke Com- greater, (/) and had a greater regard to the general and more universal than particulars. where the latter as less considerable, were to give way to the former, as of the greater concernment and tendency to the weal of the Publick; when as the Sun and the Moon by their happy influences, in doing good to the univerfality of Mankind, do sometimes, we know, occasion much evil and damage unto many men in particular, one mans gain is anothers loss; the benefit, comfort, and joy of one, hapneth to be the grief and disappointment of another; and the aggrandizing of some, the lessening of others: Lex ad particularia se non resert, sed ad (t)generalia, The Law doth not intend to provide for

ment upon Littleton, lib. 3. cap. 12. Sect. 281.

t L. Suus queque puto F. de har. infit. L. fi mayor de legit.

for particulars, but generals; Legis ratio non fit raro accidentibus, Laws are not usually made for things which do feldom happen ; Et citius tolerare volunt privatum dammum quam publicum malum, Will sooner tolerate a private and particular damage, than a publick evil or grievance; for the Priviledges granted to the City of London to be Toll-free in all Markets, Fairs, and Places of the Kingdom, which makes them able (n) to under-fell all others, and to be Masters u 2E. 3. 60-(as now they are) of all the Commerce and ram Roge Trade of the Nation : Their custom, That no At- Rot, 220. taint shall be (v) brought of a Jury impannelled in v 1 E. 3. co-London, to enforce a Gentleman or Foreigner, not ram Rege Free of the City, Arrested, to give Bail or Surety by Rot. 120. Freemen or Citizens: That every Citizen or Freemin may devise Lands or Tenements in Mortmain; (w) or that any Man to whom Money is owing, may w Crokes 1 Arrest any Man for Money upon a Bond or Bill before part Reports the Money be due or payable, or Attach Moneys in Hilar. 9. Car. another Mans hand within the City, of one which oweth Money to the Debtor: The forbidding Foreigners, and Mennot Free of the City, to Work, or keep Shop within the City or Liberties thereof: That if any Freeman, sufficient and (x) able, shall be sum- x Customs ? moned by a Serjeant of the Sheriff of the City, to ap and Ulages of the City of pear at Guildhall, to answer a Plaint, and make Landon, Default, be shall be Amerced, the grand Distress pre-Cently awarded, and his Doors fastned and Sealed, untill be hall ceme to answer; and if it be testified that he hath broken the Sequestration, shall be Arrested by his Body ; or if otherwise he is like to escape:

y Stamfords Pleas of the Crown lib. 2. cap. 41. . z Cokes z. Part Infit. cap. 15. 613.

Register of Writs 100 b. & 147 b.

a Gervasius Tilburien. MS. in recept. Scaccar. Part Titles of Honor, cap. 5. Sir Wilham Herberts Cafe, Cokes third Reports.

escape amay, on is not sufficient, a Writ of Capias (hall be awarded to take bis Body, or a Writ to Arreft and take his Goods: That in a Writ of Dower. the Tenant shall be three times summoned: That a Citizens Wife can bave no Estate in Lands devised unto her, further than during her life: The ancient and juft Priviledges of the Clergy not to be tried before a Secular (y) Judge for any criminal Matter, nor be compelled to abjure, if baving committed Felony be flie to a Church; (Z) and albeit he bath bad his Cleren for Felony, may have it again, and shall not be Burned in the Hand, nor bave his Tythes or Horfe di Brain'd as be traveleth, in any Civil action or matter, whilft be hath other Good snot to have his Goods and Chattels tobe distrained in bis Fee or Estate of the Church for purveyance, when it wasrequired : and is to be free from bearing any temporal Office; and their Bodies not to be arrested or imprisoned up. on a Statute Mechant, although an Act of Parliament doth without exception of any Persons. feverely enjoyn it: That Priviledge allowed to Knights by the ancient Laws of England. which (faith our Selden) was that their Equitatura, or Horse and Armor were priviledged from Executions (a) of Fieri, or Levari facias. although they were to Levy the Kings Debts, & Selden a. which the Law did so geratly favor, as it is to be preferred before all other Mens, and if he should dishonourably absent himself from the Kings Service when his aid was required, and that all that he had was subject to an Execution. yet one Horse was to be left him, Propter dignitatem mibitie, in regard of the honour of Knighthood; and fuch other of his Horses as were for his ordinary use, were to be spared: The exemption of divers Abbeys and (b) Monaste- b Dugdales ries, from the Jurisdictions and Visitations of 1 & 2 Tom. their Diocefan, or Metropolitan Bishops: The Monafticon Priviledges and Jurisdictions granted by King Anglic. Edward the third, in the 27th Year of his Reign, to York, Lincoln, (c) Norwich, Canterbury, c 27 E. 3. Westminster, and divers other Stable Towns, to cap. 188. be free from purveyance and Cart-taking, giving & 16. them liberty to hold Pleas by the Law-Merchant, and not by the common Law of the Land; That they fron! dnot implead, or be impleaded before the Juftices of the faid Places in plea of Debe Covenant, or Trespass, concerning the Staple: And that the Houses shall be let for reasonable Rents to be imposed by the Mayor of the Staple : The Modus decimandi, abatement, or manner of Tythes, being at the first a temporary favour or kindness, continued and crept into a Custom, and thence into a Law and Priviledge, which hath carried away, or choked a great part of the Clergies Tythes and Maintenance: The abundance of Rights and Priviledges of Common, of vicinage, or appendant, or of some stinted or not limited forts, in the Ground and Soyl, of the Propritors throughout the Kingdom, of Common of Estovers in some of their Woods, the throwing of many Meadows open, to have Common in fome Woods for their Cattel after fevenyears, growth and to Common upon the first day

SII

of

d Hil IE.I. of every (d) August, the Custom of the Town coram Rege, of Wycombe in the County of Buckingham, that any under the age of thirteen years, might give or devife Lands, and that no Tythes flould be paid

for any (e) Wood in the Wild of Kent.

e 6 Jac. in Com. Banco.

f Dugdales Monafficon Anglie. O in 2 Tom. Sed. 12.

Together with the many Freedoms, Franchifes and Priviledges to be quit (f) ab omni fella Shirarum & Hundredorum, all Suit, Scot and Lot. 1 6 2 70m. &c. and Service to Sheriffs Courts and Hundreds, which with very many others not here recited, do necessarily appear to be as prejudicial to some part of the People (who in the Wealpublick, or some of their Posterities afterwards, partaking or enjoying of the like Priviledges, do or may find themselves abundantly recompenced) may be as prejudicial to fome as they are beneficial to many, who may at the same time confider the damage which our Kings have fuffered by their Grants to divers Abbeys, as amongst others, unto the Abbey of St. Edmonds. Bury in Suffolk, which in a Plea betwixt that Abbot and the Bilhop of Ely and his Steward, in the fixth Year of the Reign of King Richard the First, appeared by the Charters of King Edward the Confessor, William the Conqueror, and King Henry the First: to be in general words, all the Liberties which any King of England might grant, the very large Priviledges of Common, of Pasture, and Estovers; the later of which hath spoiled much of the Timber of the Kingdom in many valt Forrests and Chases, their many deafforrestations, and that

that of three Hundreds at once in the County of Effex, at the Request ard Petition of an Earl of Oxford, their taking their Customs and Duties upon Merchandize Exported or Imported at small and priviledged Rates, and manner of payment of Tonnage and Poundage, and by the granting away of fo many Franchifes, Exemptions, Priviledges, view of Frank Pleg. and Liberties, which the Commons in Parliament in the one and twentieth Year (g) of the g.Ro. Parl. Reign of King Edward the Third, thought to be 21 E. 3. m fo over-largely granted, as they complained, 17. 0 36. That almost all the Land was Enfranchised; and Petitioned, That no Franchise-Royal, Land, Fee, or Advowion, which belong, or are annexed to the Crown, be given or severed from it: And so very many more Immunities, Franchises, and Priviledges, which fince have been indulged and granted to very many of the People, which like the dew of the heavenly Manna, which so plentifully covered the Camp of the (h) Children of If- h Exedu rael, and lay round about them, have bleffed many ca. 16. v. of the English Nation, and their after Generati- 13, 14. ons, as the dew of Hermon, and that which descended upon the Mountains of Zion.

And so many were those exemptions, customs prescriptions and immunities, Que longi temporis usurecepta quaque ratio vel necessitas suascrit introducenda rata of stabilita fuerint quasi tanto tempore i principis consensu sudicioque probata, Which by a l. Human, long accustomed use, introduced by reason or of de legionecessity, as the Learned Baldus saith (i) con-bus D.D.

Sff 2 cerning

1

Law of Nations have, as approved by the confent and Judgment of the Prince, been ratified and permitted, as they would if faithfully and diligently collected (as my worthy Friend Mr. Tho. Blownt hath done very many of them, k Blount's in his Learned and laborious (k) Nomo Lexicon, not onely put Posterity in mind how very many, and almost innumerable they are, and how much they ought to be thankful for them, but that their Forefathers did without any the least doubt or scruple believe, that the Kings and Princes which granted them, had power

enough to do it.

And ought not to have their ways or paffages stopped or blocked up by those Opinions of Sir Edward Coke, and the rest of the Judges, in contradiction of the late Learned Doctor Bancroft, Arch-bishop of Canterbury, in the case of Prohibitions, argued and debated before King James and his Privy Council, and Council Learned in the Law, in Michaelmas Term, in the fifth Year of his Reign, that Rex non Judicat in Camera sed in Curia (1) the King is to decide and 12 Reports. determine the Causes and Controversies of his Mich. 5 Ja: Subjects, in his affigned and Commissionated Courts of Justice, but not out of them, or in his Palace, Court, or Chamber, nor take any Canfe out of his Courts and give Judgment upon it, and that no King after the Conquift ever affumed to himself to give Judgment in any Cause mhat soever, which concerned the administration of Fustice,

Nomo Lexicon.

Coke's

cobi.

Justice within the Realm, and that the King cannot delay Justice, or Arrest any Man, neither Arrest any Man for suspicion of Treason or Felony, as

other of His Lieges may.

Wherein the Men of new Notions, who in the Itch and Hope of Gain, or the good will and applause of a Factious Party, can, like the after hated Ephori of Sparta, upon all occasions oppose the Kings legal Rights and Prerogatives, and thinking to fatisfie others as well as themselves, in making ill-warranted matters of Fact the Directors or Comptrollers of the Law, may suspend their adoration of those Errors in that ( fo called ) twelfth Report of Sir Edward Coke, which being published fince his Death, have not that candor, or fair dealing of Plonden's Commentaries, or the Reports of the Lord Dyer, or many other of his own Reports; but concealing the Arguments and Reasons urged by the Opponents. doth onely give us a Summary of his own and the other Judges Opinions, which we hope may vanish into a mistake, and meet with no better entertainment from those Reverend Judges and Sages of the Law, if they were now in the Land of the Living, to revise and examine those Opinions so Dogmatically delivered, then a Retractation, or Wish, that they had never feen the Light, or walked in the view of the Vulgar, and advise those who would gladly make them the Patroni of so many ill Consequences, as either have, or may follow upon fuch

fuch Dostrines, to build upon better Foundations, and not to adhere so much unto them, or any others, though they should be willing to seem to be as wife therein as Sacrates or Plate, but rather subscribe to the Truth.



CHAP.



## CHAP. XX.

That the power and care of Justice, and ibe di-Stribution thereof, is and bath been fo effential and radical to Monarchy, and the Constitution of this Kingdom, as our Kings of England have as well before as since the Conquest, taken into their Cognizance divers Caufes, which their eftablished Courts either could not remedy, or wanted power to determine, have removed them from other Courts to their own Tribunals, and propria authoritate, caused Offenders for Treason or Felony to be Arrested, and may upon just and legal occasions respite or delay Justice.

THen the King is Author omnis Jurisditionis, the Author of all Jurifdiction, which is the Specifica forma (m) & virtus effen- m A. Blacktialis Regis qua se nequit abdicare quamdin Rex est vodans in neque vis illa summa ditionis & potestatis Regia Dialogo addignitate citra pernitiem ejus & interitum feparari verfus Geo. distribique potest, Specifick form and effence of Buchinan Kingly Majeffy, which the King cannot alienate or depart from, as long as he is King, nor may that Jurisdiction or supream Power be fevered from the Regal Dignity without the ruine or destruction of the King, as Mr. Adam Blackwood a Scotchman hath very well declared, in his Book against Euchanan, his Learned more than Loyal Countrey-man, concerning the Magiftracy, Lords of Seffions, and Judges in Scotland,

land, That all Judges and Magistrates Ne in Civilius quidem causis nullam niss munere beneficioque Regis sententia dicenda & nullam Juris & judiciorum potestatem babent, derived even in Civil Causes, all their power and authority from the Kings Authority, and without it had no power to give a Sentence or Judgment,

n Ibid. 286 quicquid enim (n) Magistratuum st quicquid justi-287. cium Regibus obnoxium, for what ever any Magistrates or Judges do, is subject to his controll or superintendency: Quicquid pot statis ditionis

superintendency: Quicquid pot statis ditionis imperii nadi sunt id receptum benignitati Regum prestare tenentur in quorum presentia non seus exanescit quam in meridiano sole stellarum sulgor que coruscant in tenebris & lucidissimis radiis mirum in modum scintillantes apparent, Whatever Power or surisdistion they had was to be attributed to the Grant and Favor of the King, in whose Presence it doth vanish and disappear, as

olbid. 282. The brightness of the (o) Stars which shine in the dark, do at the shining or glory of the Sun:

One mad modum enim ille presenti quiequed habent luminis soli senerantur, Ita Magistratuum potestas omnis vis se imperium ubi presto Rex est ad eum redit aquo prosedum est, for as they do borrow their light from the Sun, so all the Power, Force and Rule which the Magistrates have, when the King comes or acts in his own Person, do return to him from whom they received it and that if Kings do abstinere non tantum a sentential distince sed a foro ne Regia dignitatis splendore sudicum oculi perstringantur, sorbear from

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intermedling in their Courts of Justice, it is that by the lustre of their Presence the Business of the Judges may not be hindred or disturbed, Non iguar abs re tribunalia creatis a se Magistratibus relingunt idque Solemne Reges babent ut nunquim in orcheftra conspiciuntur nisi quid momenti gravioris inciderit quod ipsornm authoritate & absoluta summaque ditione potestate & numine decidatur; Wherefore it was not without cause that they did leave their Tribunals to Judges or Magistrates, made or created by them, and made it to be as a Custom duly to be observed. not to appear themselves in their Courts of Juflice, unless some great matter of weight or moment hapned, which required the aid or affistance of their supream and absolute Authority, and that notwithstanding that James the (0) fourth King of scotland did in imitation of o Bid. 288. what he had learnt in France, Inflitute a kind of Supream Court, and call'd it The Court of Selfions for determination of Canfes, like that of the Parliament of Paris; and in Criminal matters made it to be without Appeal, Quadam vero que majoris Exempli (unt regis cognitionem desiderant que Scotorum Jurisperitorum vulgus puncta vocat sive Capita Corona reservata cuju modi sunt M.j. statis. raptus, incendii & id genus aliorum. But yet there were certain matters or things which the ordinary fort of Lawyers amongst the scots, called Points, or Pleas of the Crown, especially reserved to the Determination and Judgment of the King himfelf, fuch as Treason, Rape, burning Ttt

of Houses, or the like; which being in the Year of our Lord 1581, when Mr. Ad. Blackwood wrote that Loyal and Learned Treatife, not denied to be good Law and right Reason in Scotland, and of as long a Date or Original, as about 300 years before the Incarnation of Jefus Christ was, (although it hath fince the time that Mr. Blackwood wrote strangely deviated, into the fullen furly and unwarrantable Doctrines and Practice of a factious and domineering Presbytery, and other the heretofore Corabs, Dathans, and Abirams of Scotland) Omnium regnorum perpetua lege more & consuetudine receptum, A received and well approved Law and Custom amongst all Nations, and may feem to have been derived from the Council which Jethro (many Generations after that an inundation of Sin had piGenef. 7. in the grand and most (p) universal punishment of the Deluge washed away all Mankind but Noah and his Sons and Daughters, in all but eight Persons, and left them to tremble and stand amazed at his Justice, and adore his Mercy) gave to Mofes his Son-in-law, to eafe himfelf of his continual toil and tiring labors, From the

n Exed. 18. 2. 14, 15, 21, 22.

v. 13.

troverses (q) of the People, by conflictuting Judges over them, and reserve to his own Decision and Judgment every great Matter; Wherein it cannot Num. c. 36. well accord with the rectified Reason of Mankind, that Jethro had in that his Council any the least design to diminish the Superiority, Right, or Authority of Mojes, or that Mofes by hearkning

Morning untill the Even in determining the Con-

hearkning unto it, did intend thereby to bereave himself of the dernier ressort, ultimate Appeal and Authority with which God had entrusted him. And those not to be contradicted facred Records of the Almighty can affure us, that not onely King David, who is therein faid to have been a Man after Gods own heart, Solomon, the wifest of Kings, and the succeeding (r) Kings of Ifrael and Judah, but Ezra and Ne- , 16 2 11. hemiah, who were but as Governors, or Stadt- Reg. & Paholders under Artaxerxes over the remnant of ralipom. the Captivity of the Jews, did come close up to Exra ca. 9. that advice of Jetbro, and adhere to those eternal & 10.

Laws of right Reason, Superiority, and Rules Nehrm. cap.

of Government, ever since observed in all, or v. 13. the greatest part of the Kingdoms of the habitable Earth, amongst which our Kingdom of England, and her early as well as later Inhabitants, alterius orbis, of this our other World, for the Reasons and Authorities herein before declared, and that which shall be added hereafter in confirmation thereof, and the excellent and incomparable constitution and method of her Monarchy and Government, which will manifest it self, and be plainly evidenced to any, who shall rightly inspect it, is to be ranked and reckoned.

And may reduce to a better understanding all those who have taken up those Opinions on trust, or a sleight or no examination, that such a pattern of the Divine wisdom in his Theorraty and Monarchical Government of the promised

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Seed of Abraham, is no way repugnant to those Rules of Government which have been not onely approved and practifed by our British, Saxon, and Danifb Kings, before the Norman Success and Victory, but continued by their Successors.

When King Canutus, taught by the no feldom Petitions, Appeals and Complaints of the People, was about the Year 1016. enforced to make a Law, That Nemo injurits alterius Regi (1) queratur nifi quidem in Centuria Justitiam confequi & muti ca, 16. impetrare non potnit, no Man should complain to the King of any wrong or injury done unto him, unless he could not in the Century, or

In that great and remarkable Pleading for

Hundred-Court obtain any Remedy.

three days together in the Reign of William the Conqueror, at Pinnendene in Kent, in the grand Controversie betwixt Lanfrank, Arch-bishop of Canterbury, and Odo, Bishop of Bayenx, the Kings half Brother, for divers Mannors, Lands and Liberties of that Arch bishoprick, of which the Bishop of Bayenx had disseised him (although that King did upon special occasions sometimes EL. Gu- hold (t) his commune Concilium, or Parliament) fielmi Con- the King Pracepit Comitatum totum abfque mora queft. ca. 58 considere & homines comitatus omnes Francigenas & precipue Anglos in Antiquis legibus & con wetudinibus peritos in unum convenire, Commanded the whole County without any delay to affemble together, as well French as English, and more especially such of the English as were skilful in the

& Seldens Spicilleg. ad Ladmeri Hift.

I LL. Ca-

the ancient Laws and Customs of England. ubi Goisfredn; Bishop of Constance (u) in loco Re- u Eadmeri gir, faith the Leiger Book of Rochefter ; vel vice Hift. lib. 9. Regis, faith Eadmerns ; fuit & Justiciam illam te- & celdens muit, fat Judge tor, or in the place or stead of the ad Eadme-King, as his Commissioner, Hujus placiti multis Spicilegium teftibut multifque rationibus determinatum finem 198 & 199 postgnam Kex andivit landavit landans cum consenfu omnium principum suorum (which could not be the Commons in Parliament, as it is now formed, or the then Commune Concilium, the Parliament, confifting of his Nobility, Bishops. and Peers, who could not all of them be stiled Princes, but were rather such of his greater fort of Nobility as were then attending upon him in his Court, affembled and met together by his Command in that great and more than ordinary County-Court) confirmavit & ut deinceps incorruptus perseveraret firmiter præcepit ; the end of which Trial made by many Witneffes and Reasons, being certified to the King, he greatly approved it, and by the confent of all his Princes confirmed, and strictly commanded it to be inviolably observed.

In the Reign of William Rufus his Son, the Delegated Jultice of the King in his Courts was so little believed not to be the Kings, or the Judgments thereby or therein given, not owned or understood to be given by the King, as it was the Opinion as well as Complaint of Anselme, Arch-bishop of Canterbury (how justly or unjustly the Men of that Age, when the Church-

Church men were unruly, and did not seldom forget themselves and their Benefactors, did w Eadmeri best know) quod cunsta Regalis (w) Curia pende-Hist. lib. 2. bant ad nutum Regis nil que in ipsis nist solum velle illius considerante. That all matters in the Kings

illius considerari, That all matters in the Kings Court depended upon his Will, and his onely Will was the Director thereof; and whether the particular Interest of that stout and pious Prelate had therein milled his Judgment or no, they must be too much unacquainted with our Laws, reasonable Customs, Annals, Memorials, Records and Accompts of Time, and Transactions bigane and past, as well as those of other Nations, and the right origination or fignification of the word Curia, or Court, and the no infrequent usage or acceptation thereof, if they do not acknowledge that Kupia nuncupatur potestas & Dominium Kupio qui pote-State fretus est judiciumque exercet & Kuelana quall babitacula Domini, That Curia fignifieth Power and Dominion, and Kupio he that exercifeth that Power, in giving Judgment therein. and Kupiana the Habitation, or Place of Refidence of the Lord or Superior, dicebatur autem Curia, faith the judicious Sr. Henry Spelman, pri-

x Spelman, Glossar, in vocibus Curia & Curtu.

mo de Regia sen palatio (x) Principis inde de familia, & Judiciis in ea habitis ritu veterrimo, it being at the first, or more especially called Curia, or the Court, and took its Denomination by a most antient Usage or Custom from the Kings House or Palace, and afterwards from their Houshold Houshold or Family, and the Place where Kings

did administer Justice.

And so untill Courts for the distribution of Justice were allow'd for the ease of Princes, and better accommodation of their People, out of their Houses or Palaces, it will not be easie or possible to espy any essential difference, as to the Place of doing Justice, betwixt Curia Regis and Camera Regis, the Court or Chamber of the King; for after that some of our Courts of Justice in England, by the indulgence of their Soveraigns, ceased either to be ambulatory, or refident in their Palaces, those that have not bid a defiance to that univerfally allowed and entertained Maxim, by all or most part of Mankind, Qui facit per alium facit per se, He that doth by another, is truly and rightly said to have done it himself, and are not resolved to encounter, or be adversaries to all the right Reason which they can meet with, or to pick up fuch weak and incogent Arguments, as may make a shadow rather than substance of Truth or right Reason, ought to confess, that there is no real difference between the Kings doing of Justice in his own Person, and causing it to be done by others, or betwixt the hearing of Causes or doing of Justice in the Hall or his Privy Chamber, or any other Room of his House or Palace; and that before and from the Conquest, untill after the thirty eighth Year of the Reign of King Edward the Third, whilst the Chief Justice of the Court of Kings Beach attended

Progress, to assist him in matters of Law, and the Decision of Pleas of the Crown, and such matters of Law as were not appropriate to the Decision of the Court of Common Pleas, as it was then and hath been fince constituted, which y Class. 20 (y) did not leave the Kings Court or Palace,

y Clans. 20 (y) did not leave the Kings Court or Palace, H.3. in dor- untill King Henry the Third commanded it in so m. 14. the twentieth Year of his Reign to abide at

Westminster.

Our Kings of England have in their own Perfons heard some or many Causes, and given divers Judgments in Aula, in their Court or Palace, in some Causes wherein they had the affistance of the Lord Chief Justice of the Kings-Bench; and when they did not do it personally, by reason of their frequent Divertisements, Addresses of Ambassadors from Foreign Princes, or in respect of the many great Affairs and Cares of State and Government, which could not afford them the time or leifure to do it, did cause it to be done by their Authority, and by their constituted Justices, who Vicaria Potestate, by, as it were, a Deputation, Lieutenancy, or Assignation, to those onely purposes represented them, and were impowered to do it; the Courts of Justice in Wil. liam the Conquerors time (2) being called Jufficia Regis, the Justice of the King; aud the Judges or Justices in the Reign (4) of King Henry the Second, Justicie Regis in the abstract, the Kings Judges or Justices.

z LL. Gulielm Conquestoris apud Seldenum in Spicileg. ad Eadmerum Sed. 20. 2 Glanvile de legibus Anglia.

For the Kings Justice or Superiority was never yet by any Law or Reason absolutely or altogether confined to his delegated Courts, or authorized Judges or Justices, or to any certain or determinate Place, as that froward and powterful enough Anselme Archbishop of Canterbury, could not bur acknowledge, when in a Parliament or Great Council holden in the Kings Court at Winchester, by the Command of King William the Second, or William Rufus, in the Contest betwixt him and that King (a) concer- a Eadmer ming that Archbishops resolution o going to Hit. lib. 2. Rome and the Kings refusing to give him Li- 38,39,6 cence, divers of the Lords and Bishops passed in 40. and out betwixt them, and at last the Archbishop himself went in unto him to expostulate and debate the Matter with him.

And in the making of the Constitutions of Clarendon, in the Reign of King Henry the Serond, when Thomas Becket the Stubborn Archbishop of Canterbury , having Judgement ready to be given against him by the Lords Spiritual and Temporal in that Parliament or Great Council, upon the Complaint of John Marshal, for Injustice done unto him by the faid Archbishop, and his Defence heard. Rex exigit fudicium. The King demanded Judgement to be given against him: But the Earls, Barons, and Bishops delaying of it, and contending who (as it hath been faid in other cases ) should bang the Bell about the Cats Neck, and begin the Vote or Sentence; Rex hac andita de Vvv Prob Selden 2 Part Titles of Honor, cap.5. sell.

pronunciando (b) Controversia motus est, the King hearing the Controversie who should begin the Vote, was displeased; whereupon Henry de Blois Bishop of Winchester, impositus discretandem Ginzitus pronunciavit, being put to it to give his Vote, did at length begin it.

In the fecond year of the Reign of King John,

c Selden that great Suit touching a Barony which Wil2 part Titles lism of Mowbray claimed against william of Stuof Honor, tuile, which had depended from the Reign of
cap. 5. set. King Henry the Second, is said to have bin ended
20. Hove- Consilio (c) Regni & voluntate Regis, by the Kings
den de AnWill, and Advice of Parliament.

d Stome's Survey of London in 4to 35. tit. Prescription In the One and twentieth year of the Reign of King Henry the Third, a Complaint being made to the King (d) that Jordan Coventry, one of the Sheriffs of London, having by the Order of the Mayor and Aldermen of London, arrested and taken divers persons that were offenders in Annoying the River of Thames with Kiddels, upon Complaint made to the King, he sent for the Mayor and Citizens, and upon hearing of the Matter, consisted the Cities Jurisdiction, convicted the Complainants, Amerced every of them at Ten Pounds, and adjudged the Amerciaments to the City.

e Ibidem

In the Thirty eighth year of that Kings Reign, upon a Quarrel betwixt some young (e) men of that City, and some of the Kings Servants, the Londoners being despitefully used by them, fell upon them, and did beat them shrewdly, who thereupon cour plaining to the King, he, Fined.

the

the Citizens to pay One thousand Marks.

In the one and fortieth year of his Reign, being in the year 1256. he fatein the Court of Exchequer in Westminster Hall, where he did make Orders for the Appearance of the Sheriffs, and bringing in of their Accompts, and Fined the Mayor, Aldermen, and Sheriffs of (f) London, flbid. 885. tor Oppression and Wrongs done by them, who Tit. City of submitted themselves in that place to the King. Westmin-

And if so, and the Records and Memorials, as well of the Court of Exchequer, as of that City do speak it, there can be nothing within the pale or verge of Reason, or the fancy or imagination of any whose Intellectuals are not in a Lethargy, to make it either possible or rational, that the King himfelf had not then and there the Preheminence or Courtesie afforded him to give or pronounce the Order or Judgments; or that the Soveraignty (as the Law in more inferior matters betwixt party and party amongst private persons, doth sometimes adjudge it should be at that instant or part of time in abeiance or fuspence, and operatel nothing, ) or that the Barons of the Exchequer could at that Time by intendment of Law be supposed to represent the King when he was personally prefent Pit being by the Law of Nations a constant ulage and cultom fettled and approved in the most parts of Christendom, that the Governors of Cities and Forts do at the coming and perfonal Presence of their Soveraign, deliver unto him upon their knees the Keys thereof, and in

Vvv 2

all obedience and humility receive them and their Authority again upon their departnre and re-delivery. And it is not yet gone out of the memory of man, that Sir William Cokain Knight. Lord Mayor of London, when King James in a Great Solemnity came to St. Pauls Church, did at Temple-Bar deliver upon his knees unto him the Keyes and Sword of the City, and carried a

Or that it would not be Contrarium in object o.

Made before him.

a Parcel of Contradictions, that Effe at one and the same instant of Time can be a non effe, idem non idem, & ibi non ibi, the King should be understood not to be there, when he was there, and to be there onely virtually and in power, and not present when he was there in his Person as well as in his Power; Or that He should fit and be there onely as an Auditor or Spectator, Or as Sir Edward (g) Coke faid concerning King James his personally sitting in the Court of Star-Chamber to consult, but not in Judicio, in Judgement, when the Law and the Reason of the Law, and the Fact, and the Records and Memorials thereof do give fofull an evidence against that Pseudo Doctrine and ill. grounded Opinion, which the Learned Lawvers and Judges in the Reign of King Henry the Third, did fo little believe.

g Cokes 12 Reports Micb. 5 7a.

h Bration hb. 3 de Aciionibus. cap.5:

As Bratton discoursing where Actions Criminal by the Laws and Customs, as well (h) before his Time, as in the Reign of King Henry the Third, were to be heard and adjudged exprelly.

con-

concludeth with a Sciendum eft quod in Curia Do. mini Regis debent terminari cum fit thi pana corpo. ralis infligenda, & boc coram ipfo rege fi tangat perfonam fuam ficnt Crimen lefa Majeftatis, vel corams Justiciariis ad hoc Specialiter assignatis fi tangat personas privatas. It is to be known or certain, that Actions Criminal ought to be tryed in the Kings Court, and that before the King himself; if, as in cases of Treason, they concern the Person of the King, because there is a corporal punishment to be inflicted; or before Justices specially thereunto assigned, if they concern private persons. And gives the reason, vita vero & membrum hominum funt in manu Domini Regis , velad tuitionem vel ad penam cum deliquerint; for the lives and members of all the Kings Subjects are in the hand of the King. either to defend or punish.

Habet enim plures Curias in quibus diversa actiones terminantur & illarum (i) Curiarum babet u- i Ibidem nam propriam ficut Aulam Regiam & Justiciarios cap. 7. Capitales qui proprias causas Regis terminant & aliorum omnium per querclam vel per privilegium five libertatem : nt fi fit aliquis qui implacitari non debeat nisi coram ipso Domino Rege; for he hath many Courts in which divers Actions are to be tryed. And of those Courts hath one of his own, as that of the Kings Palace, and hath Chief Justices who are to hear and determine the proper Causes of the King, and of all others upon complaint, or by reason of priviledge or liberty, as where a man fued or profecuted ought

ought not to be impleaded but before the King. For in vain were many fince the Conquest exempted by Priviledge not to be trved before any but the King himfelf: if our Kings did never use, nor could in person hear and determine fuch Caufes (as all the Kings and Princes of the civilized Part of the World have used to do.) And of small or no force or avail would be that Claufe in our Magna Charta fo hardly obtained by our Fore-fathers . that the King Nulli negaret Justitiam vel Redlum should not deny Justice or Right unto any who demanded it, and little deserving to be called or thought a Liberty, if it were not within the reach of his Power, and it would be a kind of Injustice to oblige or require him to do that which he could not.

Which the Reverend Judges and Sages of the Law in the eighteenth year of the Reign of King Edward the First, were so unwilling to in-

terpret to be out of his Power.

k 18 E. 1.

As when John Bishop of Winchester (k) having granted unto him free Chace in all the Demessing Lands and Woods of the Prior and Covent of St. Swithen in Winchester, and their Successors, and being in the Kings Service in the Parts beyond the Seas, and having his Protection for all his Lands, Goods and Estate, brought his Action, wherein he did set forth the Kings Protection, and his being as aforesaid in his Service, against Henry Huse, Constable of the Kings Castle at Portcester, for that he had hunted in his afore-

faid Chace and Liberty in contempt of the King, and contrary to his aforesaid Protection whilest he was in his Service as aforesaid. To which the faid Henry Hufe pleading that what he had done was lawful for him to do, by reafon of a Privilege belonging unto his faid Place or Office of Constable of the Castle aforesaid; and Iffue being joyned thereupon, the Court stayed it, and delivered their Opinion. That no Jury ought to be impannelled, nor any Inquilition taken thereupon, in regard that Inquisitio ifta Doming Rege inconsulto tam propter Cartam ipfins Domini Regis porrectam quam nemo per inquifitionem patrie vel alio modo judicare debet nifi folus Dominus Rex quam ratione Ballive predict que eft ipfius Domini Regis & ad quam prediction H. nricus dicit libertatem predictam pertinere, that fuch an Iffue or Inquiry ought not to be, the King not consulted or made acquainted therewith as well in respect of his Charter produced, which none but the King by any Jury or Trial ought to Judge, as in regard of the Liberty al. ledged by the faid Henry to be belonging to the King. Et dillum eft partibus quod fequantur verfus Dominum Regem quod precipiat procedere ad preditt' inquisitionem capiend' si voluerit vel quod alio modo faciat voluntatem fuam in loquela predid. And the Parties were therefore ordered to attend, and petition the King to command the Judges, if he please, that they proceed in the faid Action, or by some other way declare his Will and Pleafure concerning the faid Action (and is a good direction for Subjects to ask leave of the King before they Arrest, or any way endeavor to infringe the Priviledge of his

Servants.)

In the twentieth year of the Reign of that King, in a Cafe in(1) the Court of Common-Pleas, where William de Everois being Demandant, had complained to the King that the Judges of that Court did delay to give Judgement, and the Judges acknowledging that helhad been long delay'd, in regard that the faid William required Seisin to be delivered unto him by Contract made in the time of War, which he denied: Didum eft prefatis Justic' quod ad judicium procedant prout facere consueverunt. Et faciend' eft de feifina & contractibus factie & in tempere & parter Guerre; the King ordered the Judgerthat they should proceed to Judgement, as they used to do, and make an Order concerning the Seifin and Contracts had between the parties thereunto in the time of the War.

In the same year a Complaint being made to the King, that Sir John Lovel Knight, being Plaintist, before the Justices of the Court of Common-Pleas, in a Writ which had long depended, and was made in an unusual Form of the Chancery, and the Defendant in the beginning of the Plea before Thomas of Weyland, and his Associates the Justices of the said Court, had put in his Plea of Abatement and Exceptions to the said Writ, and prayed that it might be Entred upon the Rolls and Recorded, which after-

wards

wards could not be found; but in regard that Elias de Beckingham one of the Judges remembred the faid Plea, to whose onely memory a greater Credit is to be given, than to the Rolls of the faid Thomas of Weyland, who with the rest of his Fellow Judges, except the faid Elias of Beckingham, were formerly Fined and punished for other Misdemeanors: Et idem Elias semper fidelie extiterit, & in servicio Regis fideliter fe gefferit ; and the faid Elias was always taithful, and in the Service of the King did well behave himfelf; And all the then Judges did agree, that if a Writ of that Form should be brought unto them and pleaded in Abatement, they would immediately quash it; And for that non eft Juri consonum quod per maliciam predict. Thome & Sociorum suorum sibi adherentium qui Exceptiones Tenentis admittere noluerunt, & cum ipsum proposnerit tempore Competenti non allocaverunt per prout prefatum Eliam recordatum eft. It is not agreeable to Law, that by the malice of the aforesaid Thomas and his Fellow Judges confederating with him, who would not admit or allow of the Tenants Exceptions, when it was in due time pleaded, as by the faid Elias was witnessed; Didum eft Juftic' quod procedant ad Judicium Super exceptione Tenentie prout fuerit faciend' & ac fi in Recordo inveniretar; The Judges were ordered to proceed to Judgment upon the Tenants Exception, as it ought to be done if it had been recorded.

In the year next following, William de Mere
Xxx Sub-

Sub-Escheator of the King in the County of m 21 E. 1. Stafford, and Reginaldus de Legh, (m) who was coram Rege. one of the fworn Justices of the King, having an Information brought against them before the King and his Council, (the Justices of the Court of Kings Bench ) for that after the death of Teffery de Howel, who held Lands of Ralph Ballet by Knight-fervice, and the death of the said Ralph, who had seized all the Lands of the faid Jeffery, and had in his life time the custody and marriage of William the fon of Jeffery, and dving seized of Lands holden of the King in Capite, and of the custody of the said William. and the Heir of the faid Ralph being likewise under age, and with the Lands of the faid Ralph feized by the faid Sub-Escheator, he suffered the Heir of the faid Jeffery without the Kings Writ, to enter upon the Lands of the faid 7effers. And the faid Reginald de Legh by fraud and collusion betwixt him and the faid Sub-Escheator, took away the Heir of the said 7effery and married him; To which Information the Sub-Escheator pleading that he did not feize the Lands; which he that followed the Suit for the King proved that he did: and Reginald de Legb pleading that the faid Ralph before his death, upon view of the said Wards Writings and Evidences, finding that he had no Right thereto, did acquit and release it; and that the like appearing to the faid Reginald by the fight of the faid Writings, he did fatisfie and agree with the Friends of the faid Ward for

for the faid Marriage; but confessed that he did take notice that the Sub-Escheator had seized the faid Lands: but the faid Sub-Escheator perceiving that the King had no Right thereunto, did relinquish it to the Friends of the faid Heir. And as well the faid Reginald as the faid Sub-Escheator petunt & dicunt quod si videatur consilio Domini Regis quod in aliquo deliquerunt quod Dominus Rex fuam inde faciat voluntatem, did petition and pray, that if it should appear to the Court that they had offended in any thing, the King might do his Will and Pleasure therein (a Modesty and Submission too little used now of later Times ) whereupon the Court declaring Onod potius pertineat Ministris Domini Regis, & maxime Justiciariis (uis Statum Domini Regis & jura Heredis in custodia ipsius Regis Existentium manu tenere quam in aliquo infringere; That it belong'd rather to the Ministers and Officers of the King, & more especially his Justices, to maintain his Estate and the Rights of the Heir within his custody, than in any thing to infringe them, did adjudg that the faid Reginald and Sub-Escheator should be fent prisoners to the Tower, there to remain during the Kings pleasure; and that the said Reginald should satisfie the King for the Marriage of the faid Heir, and the faid Lands should remain in the Kings hands with a Salvo Jure, faving of the Right of all Pretenders thereunto.

In the three and thirtieth (n) year of the Ryless pla-Reign of the aforesaid King, upon the Petition cit Parliain Parliament of Ranulph the Son of Hugh le menterum. Marefial, that whereas he was Demandant by a Writ of Entry against the Rector of Astrugg, for a Messuage and divers Lands, and he alledged that he could not answer without the King. It was answered, Rex vult quod respondeatur quod Justiciarii procedant, sed certificent Regem super boc ante redditionem Judicii, &c. The King willeth that the Tenant do answer the Demandant, and that the Justices do proceed, but certifie the King thereof before they

give Judgement.

And if then, and ever fince our Kings have had a Super-intending decision and confirming Power of Judgement in matters of Justice, and that without it nothing can by our Laws and reasonable Customs be done in Parliament, the highest of all their Courts, where the King is as it were the Ens Potentiale, and is no less than the Constituent Principle and Soul that animates all their Sanctions, where the Laws and Judgements receiving life and vigor from Him, and have their Energy, do not seldom appear to have been made with Rex volvit, the King wil-

3. E1. cap. lath; Rex providit, the King provideth; Rex Statute of mandavit, the King commandeth; Rex statute, the Exchet the King appointeth; Rex ordinavit, the King quer. 13 E. ordaineth, &c. all the Courts of Justice and 1 Statute of Equity in Westminster Hall, and all the Innel. 13 E. ferior Courts of Justice will not be able to pronel. 13 E. 1. cap. 2. 28. E 1. & eodem Anno cap. 5. 1 E. 1. 3. & eodem Anno cap. 5. 9. 14. & 17. 2 E. 3. 25 E 3. 28 E. 3. 2 R. 2.
9 R. 2. 10 K. 2. 5 H. 4. Rot. Parl. in 62. 4 H. 5. 10 H. 6. cap. 4.

duce.

duce (if Prescriptions could avail against the Kings Rights and Means of Government, ) any Prescription, or any Law, Custom, or Allowance to exempt them from the Kings Supream Jurisdiction, whose Royal Ancestors and Predecessors did heretofore upon all extraordinary occasions so much praside and intermeddle in their Courts of Justice; as Fleta an Author of good account, (o) who as hath been before o Flets lib... mentioned, did about the later end of the 2. ca. 3 lett Reign of King Edward the Second, or the begin- 4,5,6,7,8. ning of the Reign of King Edward the Third, write his Book of the Laws of England, and Customs of Courts at that time used, doth declare the usage then to be, That when the King in his Progress or Removal from his Palace at Westminster, to any other County or Place to relide for a time, as our Kings did heretofore often use to do, and was in any other County, the Steward of his Houshold, as Deputy to the Chief Justice, issued forth his Writ to the Sheriff of the Place or County where the King was to refide, to cause to come before him at a certain day wherefoever the King should be in his Builywick, all Affizes of Novel Diffeifin, Mort d'Auncester, last Presentations, Grand Assizes, all Juries, Inquisitions, and Attaints, Pleas of Dower, and which were summoned to be determined before the Kings Justices at the first Assizes when they should come into those Paris; And all Pleas, Juries, Inquisitions and Attaints assigned to be heard before the said Tufti-Cesa

ces, but were not determined, giving the parties a day to prosecute, if they pleased; and likewise to come before them at a day prefixed; And to cause to be brought before them all Prisoners, Bails, and all Attachments which appertain to the Goal Delivery, quod quidem mandatum frequentur retro. trabitur per ejufdem Senefcalli mandatum; Which Tryals might notwithstanding, faith Fleta, be recalled by the Stewards Mandate, which would necessarily produce some delay of Justice, or disturbance of the Peoples affairs or expectations, Eo quod Rex forte novis emersis propositum suum mutaverat, in regard that the King upon some new Emergencies had altered hisminde or purpose; But if the King did not decline or forbear his intended Progress, then was holden the Goal-Delivery by the Steward; And all Duels or Tryals by Battels, Appeals, and all criminal Matters were determined by him, with what conveniency he might; and afterwards all Causes concerning Trespasses done within the Verge, and after that the Assizes and Juries Obligations and Contracts, wherein the Debtors had of their own accord bound themselves to be tryed before the Steward and Marshall of the Kings House, placita autem que ibidem terminari non

Ibidem Sett. 8. & 9.

House, placita autem que ibidem terminari non poterint de Comitatu in Comitatum & die & in diem poterit adjornare, vel in Banco vel ad primas Asisas, vel alibi secundum quod suerit faciend' donec suerunt omnia terminata; but those Pleas which could not be there determined,

were

were to be adjourned from day to day, or County to County, or to the Common-Bench', or unto the first Assizes, or elsewhere, as it should be thought meet, until all were rightly determined. Et kec omnia ex Officio suo licite poterit facere non obstante alicujus libertate; And all this he might by his Office lawfully do, not-

withstanding any mans liberty.

And furely fuch a Super-intendency of the Soveraign was as much allowed to be Law as Reason, in the nineteenth year of the Reign of King Henry the Sixth, when upon an Affray in London for rescuing a Soldier a Prisoner in Newgate, as he was leading by an Officer towards Guybald, by five perfons, and carrying him by force into the Sanctuary, or Priviledgeplace of St. Martins le Grand; the Kings Free-Chappel, being a Liberty of the Dean and Chapter; and the Sheriffs of London having the fame day (p) taken out of the fame Church of P Rot. pat: St. Martins the five men who rescued him, and 19. H.6. led them fettered to the Compter, and thence am dorle chained by the Neck to Newgate; complaint thereof being made to the King by the faid Dean and Chapter, for the violation of their Priviledges, he sent his Writ to the Mayor and Sheriffs, reciting that from a long time beyond the memory of man, fugientes ad Capellam predictam pro immunitate ejufdem babend' feu in eadem ex quocunque causa existentes & residentes quieti fuerint , & Immunes & fic effe debuerint, & debent ab omni Jurisdictione, Arrestatione Inepedimente,

pedimento, five Attachamento Majoris & Vicecomitum Civitatis pradicta, ant Officiariorum feu Ministrorum (uerum quorumcunque pro tempore existentium; those that fled to the Chappel afore. faid to enjoy the Priviledge thereof, or being therein resident upon any cause or occasion whatfoever, have used, and ought to be quiet and free from the Jurisdiction, Arrests, Impediments, or Attachments of the Mayor and Sheriffs of the City aforesaid, or any their Officers or Ministers whatsoever for the time being ; and that notwithstanding the said Sheriffs had to the prejudice and detriment of the Churches Liberties, and derogation of His Crown and Royal Dignity, violently taken from thence John Knight , John Reede , Thomas Blackbourn, William Janiver, and Richard Moreys, and committed them to Prison, wherefore the King, to preserve inviolably the said Rights, Customs, Immunities, Liberties and Priviledges prout vinculo Juramenti in Coronatione astringitur, as he is thereunto bound by his Coronation Oath, enjoyned them that immediately after the Receipt of that Writ, they should restore and deliver to the faid Dean and Chapter, or their Commissary, the said Prisoners, tam corpore quam bonis sicut eos prefati Vice-comites a Capella predita abstraxerunt, in their bodies and goods, as the faid Sheriffs took them from the faid Chappel as aforesaid, so as the said Dean and Chapter in corum culpam fen defectum caufam non babent sibi iterum conquerendi; Et hoe sub Fide & Ligeancia

Ligeancia quibus teneantur unllatenus omittant, by their default or neglect may have no more cause to complain again to the King; And this under the Faith and Allegiance which they did owe unto him, they were not to fail to perform: Which Writ being by the Kings Command fent and delivered by John Earl of Hun-tington, the faid Sheriffs yet notwithstanding detained them in prison; of which the King being informed ore tenus precepit, he did by word of mouth command John Bishop of Bath his Chancellor, and Ralph Lord Crommel his Treafurer, that they should go to the faid St, Martins, and upon Examination of the Parties, hearing of Councel on both fides, and due confideration of their several Charters, Customs, and Evidences, certifie him what by Law was to be done therein; who thereupon taking unto them John Hody and Richard Newton, Chief Justices of both the Benches, called before them the faid Dean and Chapter, Mayor, and Sheriffs, and heard both fides, who gave to them in writing, as well what could be alledged for the faid Priviledges, as against it; which being duly understood by the said Chancellor, Treasurer, and Justices, it was adjudged by the faid Chancellor and Treasurer, by the advice of the faid Justices, Quod persone predille a Capella pradicta violenter ab ftratte, reftiini debeant ad candem tanquam ad locum plenaria libertate tam de fure quam consuetudine gandere debentem, & non de Civitate pradicta, nec Majoris

Vicecomitum, Aldermannorum, aut Officiariorum ejufdem Jurifdictioni, fen diftrittioni Subjett', fed eifdem Immunitatibus , Privilegiis & Libertatibus qua Westmonasterium, Beverly, aut alius locus privilegiatus in Anglia meliores babet, tam de fure quam consuctudine pro se o precintin ejusdem ad tuend quascunque personas pro quibuscunque caufis Griminalibus five Civilibus illuc confugientes gandere debentem; That the persons aforesaid violently drawn out of the Chappel aforefaid, ought to be restored to the same place which of right and custom ought to enjoy their full Liberty, and not to be subject to the Jurisdidion or Distress of the City aforesaid, or the Mayor, Sheriffs, Aldermen, or Officers of the fame, but to enjoy the faid Immunities, Privi-Jedges and Liberties, as Weftminfter, Bev. rley, or any other priviledged Place in England, of right and custom ought to enjoy, for them and their Precincis most largely had, to protect and defend any persons flying thither, for any causes Criminal or Civil: And thereupon the King being informed of their Proceedings, and what they found therein, commanded his Chancelfor that by his Writ directed to the Sheriffs of London, that they should bring before him in his Chancery the Bodies of the faid Prifoners taken out of the Chappel as aforefaid, with the cause of their taking and detention; who being brought by the Kings Command into his Chancery by the faid Sheriffs, they did there by the advice and confent of the Duke of Glonce.

fer, and of others of the Kings Council, and by Order of the faid Court discharge the faid Prifoners, who were there in the presence of the Sheriffs, Recorder, and Council of the faid City; ad boc evocatorum Thome Collegge fervienti Domini Regis ad arma personaliter liberati ibidem ad effectum quod idem serviens dillos Prisonarios & corum quemlibe ufque dictam Capellam & Sandharium falvo & fecure adduceret, & eos ibidem de mandato Regio prafato Decano sive ejus Deputatis liberares & ibidem juxta libertates. privilegia, & immunitates predicta in Sandwario preditto quam din eis placeret moraluros, thereunto especially called personally deliver'd unto Thomas Collegge the Kings Serjeant at Arms, to the end that he might fafely and fecurely bring the Prisoners to the said Chappel and Sanctuary, and there by the Kings Command deliver them to the said Dean or their Deputies, there to remain as long as they pleafed, according to the Liberties, Priviledges and Immunities aforesaid; which was done by the said Serjeant at Arms, and a Certificate made by him to the faid Chancellor, Treasurer, and Court of Chancery accordingly.

And he must be altogether composed of, or addicted to Scruples and Doubts, wherein he never desires to be satisfied, and fit to say! to Anticyra in pursuit of Hellebore, who shall against so clear a Light and Evidence, bestow his time and labours to vindicate and under-prop so manifest and notorious Errors, or that shall

Yyy 2

deny

deny the King a Judicial Power in His Courts of Justice, and High Court of Chancery. whence do almost daily issue his Writs remediall under His Seal, and Teste Me Ipso, directed to all His Courts of Juffice. And are, as Bradon (r) faith, Formata ad similitudinem Regula Juris, framed by and according to the 413. Cokes Rules of Law, which warranting many of the Proceeding thereof are in the Affize bepreface to his twixt Wimbish and the Lord Willoughby in Trinity Term, in the fixth year of the Reign of King Edward the Sixth faid, and not denyed to be Law., and (1) the Act of the King, but not of the Chancellor.

s Plowdens Comment. 76 a.

r. Bracion

lib. 5 fol.

& Reports,

So as they who shall endeavour to impose upon other men, that the King is not by Law prefumed to be present in his Court of Kines Bench, where the Records do mention the Judgements given therein to be coram Rege, before the King, as if he were personally present with the Judges of that Court, who areassigned to affift Him, may, as to the Kings Power in matters of Justice, and over the Judges and Courts delegated by Him, do well to feek a reason, which is justly to be feared will never be found, why it should be Law or Reason for King Alfred in the (t) discords or ignorance of his Subordinate Judges in the distribution of Justice, to hear and determine the Causes Himfelf: or for King Canutus long after to judge the Causes of such as complained unto him, when our Bradon doth not at all doubt of it, when he

& Affer Menenensis de rebus geftis Alfredi & Selden, 2 part. Tit. of Honor, ca, 5. (ed.5.

he faith, (w) that the Judges nullam habent An- u Bratton thoritatem fed ab alio, i. e. Rege fibi Commiffam lib. 3. de Acum ipfe qui delegat non sufficiat per se omnes dionibus, Caufas five Jurisdidiones terminare, they have cap. 12.fol. no Authority but what they are intrusted with by the King who granted it, when as he who delegated them is not able or fufficient by himfelf to hear and determine all Causes in every Jurisdiction; unto which our Register of Writs that Pharmacopeia, Director, and Magazine of Medicines and Remedies for many a Disease in the Estates and Affairs of the People, which Justice Fitz Herbert in his (w) Preface to his W Coke Pre-Book De Natura Brevium, of the Nature of face to bis Writs, calleth The Principles of the Law, and the Foundation whereupon it dependeth; and in Plowdens Commentaries is as to many things truly faid to be the Foundation of our Laws, and fo Authentique, as Brown Justice in the Case betwixt Willon and the Lord Barkley, in the third year of the Reign of Oucen Elizabeth (x) de- x Plondens clared, that all Writs were to purfue the Forms Commentain the Register, and it was enough to alledge, jo ries. 228. is the Regifter, will eafily affent; and all our Books of the Law, all the Practice and Ulage of our Courts of Justice, all our Records, Close, and Patent Rolls, and our Kings hearing and determining of Differences betwixt the Common Law and Ecclesiastical Courts and Jurisdictions, and their making of Orders to reconcile the Proceedings of the feverall Judges thereof; and thellike betwixt the Admiralty Court

Court and the Courts of Common Law, ordered, decided, and agreed before King Charles the First and His Privy Council, in the ninth year of His Reign, the Judges in criminal Matters not feldom attending the King for a Declaration of His Will and Pleasure, where a Reprieve, Pardon, or Stay of Execution shall be necessary, will be as so many almost innumerable, powerful, and cogent Arguments to justifie it; And a common and dayly Experience, and the Testimony of so many Centuries and Ages past, and the Forme used in our Writs of Soire Facias (y) to revive Judgements after a year and a day, according to the Statute of Westminster the 2, with the words Et quia volumus ea que in Curia nostra rite alla funt debite executioni demandari, because we would that those things which are rightly done in our Courts should be put in execution.&c. may bear witness of that Sandy Foundation Sir Edward Coke hath built those his great mistakings upon; and those also that the King cannot, propria Authoritate, Arrest any man upon suspition of Treason or Felony, when the Statute made in the third year of the Reign of King Edward the First exprelly acknowledgeth, that the King may Arrest, or cause men to be Arrefted, as well as His Chief Justice without distinction, in ordinary and civil, or criminal matters, and when by the beforemention'd Opinions of Sir Christopher Wray Lord Chief Justice of the Queens Bench, Sir Edmond Anderson Lord

y 13 E. 1.

Lord Chief Justice of the Court of Common-Plear, and of all the Judges of England, delivered under their hands in the Four and thirtieth year of the Reign of Queen Elizabeth, it was acknowledged that She, or the Lords of Her Privy Council might do it; And in the before recited great Cafe of the Habeas Corpora in the Reign of King Charles the Martyr , there was no question made, but that the King might lawfully do it, with a cause expressed in the Warrant; And many a Nobleman and others hath in feveral of our Kings Reigns, either upon Suspition of Treason, or Flagranti Crimine, in or very near the acting of it, or upon great Mildemeanors, been Arrested by our Kings and Princes onely Command, and fent Prisoners to the Tower of London; As the Great Mortimer. Earl of March, by King Edward the Third; the Pompous Cardinal Wolfey, and Queen Ann of Bulloin by King Henry the Eighth; the Duke of Northumberland by Queen Mary; the Duke of Norfolk and Earl of Effex by Queen Elizabeth, for Treason; Robert Earl of Somerfet and his Lady committed for Felony; Sir The. Overbury for 1efuling to go Ambassador when he was fent by King James & Henry Earl of Oxford, for friking up a Great Lords heels in a Solemnity of a great Fealt, when the French Ambassador was entertained in Westminster Hall, for presuming to offer to wash his hands after the King had washed in the Basia, which as Lord Great Chamberlain of England, he had holden to the King ;

Thomas

Thomas Earl of Arundel, for marrying the Lord Matravers his Son to the Sifter of the Duke of Lenex and Richmond, without his Licence; and Philip Earl of Pembroke, and the faid Lord Matravers, for striking and scuffling with one another in the House of Peers in Parliament, and Some others by King Charles the First; and some by His now Majesty and our Parliaments have many times in some Charges brought against offenders of the Weal Publique, petitioned our Kings and Princes to do it; and many others have been fo committed in the Reigns almost of all our Kings and Princes, of which every Age and History of this our Kingdom can give plentiful Examples, which we may believe to have been done by good and legal Warrant, when in all our many Parliaments and Complaints of the People therein, fuch Arrests and Imprisonments have not been in the number of any of their complained Grievances; for otherwife what Power, Writ, Authority, or Warrant of a Judge, or Justice of Peace could have seiz'd upon that Powerful Mortimer, and takenshim in Notingham Castle, out of the amorous Embraces of Queen Ifabel, the then Kings Mother? Or the popular & greatly belov'd Duke of Norfolk, out of the County of Norfolk? And Sir Edward Coke that great Lawyer, so deservedly call'd, might, if he were now again in his house of clay, and that Earthly Honor which his great Acquelts in the Study and Practice of the Law had gained him. do well to inform us, that the Report of Hulleys

the Chief Justice, who is by him mistaken and 1 H. 7.5. called the Attorney-General to King Henry the Seventh, was any more than an Hear-fay, and nothing of kin to the Case put by the King, whereupon they were commanded to affemble in the Exchequer Chamber, whether those that had in those toffing and troublesom times been Attainted, might fit in Parliament whilft their Attainders were reverling; And the Case concerning the King himfelf, whether an Attaind. er against himself was not void or purged by his taking upon him the Crown of England; or that which in that Conference was brought in to that Report impertinently and improperly, to what preceded or followed by the Reporter of that Conference was not at the most, but some by discourse and not so faithfully related, as to mention how farre it was approved, or wherein it was gain-fayed by all or any; or how many of the Judges, it being altogether unlikely that if Huffey had been then the Kings Attorney-General, he would have cast in amongst those Reverend Judges fuch an illegal and unwarrantable Hear-fay of an opinion of the Lord Chief Justice Markbam in the Reign of King Edward the Fourth ( whom that King as our Annalist Stow recordeth, displaced for condemning Sir Thomas Cooke an Alderman of London for Trea. fon, when it was but Misprisson) faid unto that King, That the King cannot Arrest a man upon suspition of Treason or Felony, because if he should do wrong, the Party cannot have an Adion against Zzz

the King, without a bestowing some Confutation, Reason, or Arguments against it, which the Reporter was pleased to silence; And was fo weak, and little to be believ'd an Opinion. as the practice of all the Ages since, have as well as the Times preceding, disallowed and contradiced it; and whether fuch an Opinion can be warranted by any Law or Act of Parliament; And whether the King may not take any Caufe or Action out of any of His Courts of Justice or Equity, and give Judgment thereupon; and upon what Law, Reason, or Ground it is not to

be done.

For if the Answer which Sir Edward Coke made to what the King alledged, That the Law was grounded upon Reason, and that he and others bad reason as well as others; That true it was, God had endued His Majesty with excellent fcience, but His Majefty was not learned in the Laws of England, and Caufes which concern the Life and Inberitance, or Goods of his Subjects, which are not to be decided by natural Reason and Tudement of Law, which judgment requires long fludy and experience. And when the King was therewith greatly offended, and replyed, That be Should then be under the Law which was Treason to be faid answered, that Bracton faith, That Rex non debet effe sub homine, sed sub Deo & Lege; That a King ought not to be under man, but God and the Law, shall be compared with the Opinion of Dyer, Lord Chief Justice of the Court of Common Pleas, and the Judges of that Court

Cokes 12. Report.

Court in the Cafe betwixt Grendon and the Bishop of Lincoln, and the Dean and Chapter of Worcefter, upon a Demurrer in a Quare Impedit. in the eighteenth and nineteenth year of the Reign of Oneen Elizabeth reported by Mr. Edmond Plowden, as great and learned a Lawver as that Age afforded, and one whom Sir Edward coke doth acknowledge to be no left. did allow, and were of opinion, That the King cannot be ( ) beld to be ignorant of the Law, y Plomdens because He is the Head of the Law , and igno- Comment. rance of the Law cannot be allowed in the King, 502 s. Ob. there will be as little cause as reason to dote upon fuch Conclusions, especially when the erronious Mif application and evil Interpretation of that alledged out of Bradon will be obvious to any that shall examine the very place cited, that his meaning was, that where he faid that the King was fub Dee & Lege, under God and the Law, it was, that he was onely non uti potentia fed judicio & (a) ratione; And in other places of his Book speaking who prime of prim a Brad, lib. cipaliter poffit & debeat judicare, who first and 1. de rerum principally thall and may judge, faith , Er fei- div fione.c.\$ endum quod ipfe Rex, & non aliss & folio ad hoc & lib. 3 de sufficere possit, cum ad hoc per virtuem Sacra-Alionibus menti teneatur aftrictus. And it is to be under- Lib, 2. de frood, that the King Himfelf, and none other, Aquirend. if he alone can be able, is to do it, feeing He Dominium is thereunto obliged by His Oath & Ea wero qua cap. 24. Jurischie ionis funt & Pacis, & ea que sunt Justicia & Paci annexa ad nullum pertinent, nift ad Zzz 2 Coronam

Coronam & Dignitatem Regiam, nec a Corona feperari poterint, cum faciant ipfam Coronamy for that which belongeth to his Jurisdiction, and that which belongeth to Justice and the Peace of the Kingdom, doth belong to none but the Crown and Dignity of the King, nor can be separated from the Crown when it makes the Crown, so as those who should acknowledge the strength and clearness of a Consutation, in that which hath been already, and may be faid against those Doctrines of Sir Edward Coke, may do well to give no entertainment unto those his Opinions, which nulla ratione, nulla authoritate, vel ullo solido fundamento, by no reason, authority, or foundation can be maintained. but to endeavor rather to fatisfie the world, and men, of law and reason, whether a Soveraign Prince, who as Bracton faith, babet omnia fura fra in monufus que pertinent ad Regni gubernaculum babet , etiam Jufticiam & Judiciam que funt furisdictiones ut ex furisdictione sa ficut Dei Mimifter & Vicarius, hath all the Rights in his hand which appertaineth to the Government of the Kingdom, which are Jurisdictions; and as His Jurisdiction belongeth unto Him as He is Gods Vicar and Minister, is in case of Suspition of Treasonor Felony, where His ever-waking Intelligence and careful Circumspections to keep Himfelf and People in fafety, shall give Him an Alarm of some Sedition, Rebellion, or Infurrection, and put on His Care and Diligence to a timely Endeavor to crush or spoil some Cockatrice

atrice Eggs bufily hatching, to fend to His Lord Chief Justice of the Court of Kings Bench, or in his absence out of the Term, some Justice of Peace, for a Warrant to Arrest or Apprehend the party offending or suspected; which our Laws and reasonable Customs of England did never yet fee or approve, and when fuch offenders are to be feized as fecretly as fuddenly Or what Law, Hiftory, or Record did ever make mention of fo unufual, undecent, and unfitting a courfe or method of Government? For can any man that is Master of the least grain of Reason or Prudence, think it fafe for a Kingdom fo to reftrain, if it could be, a Soveraign Prince, when a person in time of Pestilence, or otherwise, thath with a Plague-Sore running upon him, come into the presence of the King, who in case of Leprosie, when it was more frequent than now it is, can for the preservation of His People from the infection thereof, make His Writ de Leproso amovendo, command(b) chel.eper Wiss 267. to be removed to some other place, that He should have no power to bid any of His Servants to cause him to be taken away, or put in prisons Or that King James, when his Life was affaulted by the Affassinate which Earl Gowren had appointed to murther him, did transgress any Law of Scotland, Nature, or Nations, when he did arrest and struggle with him, until the loyal Sir John Ramfey came to his Rescues Or that that prudent Prince after his coming into England, did break any Law of England, Nature; or Nations.

tions, or not perform the Office of a King, when by his own Authority he did, without fending to the Lord Chief Justice of the Kings Bench, or a Justice of Peace for his Warrant, cause Sir Themas Knivet and others, to apprehend Guydo Faux but some minutes before the Match should have been secretly and undiscovered laid in order to the firing of the Gunpowder and other Matterials, which were shortly after to take fire for the accomplishment of the intended treason of him and his wicked Complices, to destroy the King. Prince, Nobility, and the Chiefest of his People affembled in Parliament, and all that were in or near the Cities of London and Westminster, by the Gunpowder Plot of blowing up the Houses of Parliament? And whether a King may not in the like case of Contempt or Danger, as well do it, as he may do where a Souldier prest in the Kings Service, upon a Certificate by the Captain into the Chancery, being the Watch-Tower or Treasury of the Kings Justice, that he absented himfelf, fend his Writ or Mandate to one of his Serjeants at Arms to take him; which Sir Edward Coke faith may be done per Legem terre, by e Coke 2 Part the Law (c) of the Land; and may upon a Certificate of an Abbot or Prior into the Chancery do the like by his Writ to the Sheriff, to take a man professed in Religion that is Vagrant, and alloweth it to be Lex Terra, a Legal Process fo to do in bonorem Religionis, in honour and red Br. 14. H. spect to Religion; (d) or may not as wel imprison a man for a Contempt, as Discharge him? Or

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why

why He may not Arrest, or cause any man to be Arrested for Felony or Treason, or but su-Spition thereof? when Sir Edward Coke (e) is of e Coke 2Par. opinion any man may do in the Kings Name upon cap. 29. p. 52 a common Fame, or Voices or Arrest a man by warranty of Law and of bid own Authority, which wounderb another dangeroufly, or keepeth company with a notorious Thief, whereby he is suspected; or if the King shall not upon necessity, or extraordinary occasions, be enabled to do it for that fupposed, rather than any reason at all, that he ought not fo to do, in regard that no man can have an Action against Him for any wrong or injury done unto him by the King? How have our Lawes and reasonable Customes for many Centuries and Ages past submitted unto, and not at all complained of the Kings Seizure of Lands, but suspected to be forfeited; or of Lands aliened without Licence, or pardon of Alienation, and the like? Or why should not our Kings have as much liberty as the holy King Edward the Confessour might have had, if he would, to have commanded a Thief to be apprehended for stealing in the Royal Lodgings, when he bad him onely be gone, left Hugeline his Chamberlain should come in and take him? Or as legally as King Edward the Third, and his f Br. Tit. Council, did commit one that was found arm'd Contempt.6. in his Palace, to the Marfbalfea, whence (f) he + 24. E. 3. could not be bayl'd or deliver'd, until the Kings Will and Pleafure should be known? Or as it was adjudged in the thirty nineth year of the Reign

O Br. Tit. Monstrans de faits Tit. 79.

of King Henry the Sixth, when in an Action of Trespass, the Defendant justified the doing thereof by the Command of the King, when be was neither Bayliff nor Officer of the Kings, and it was adjudged by the Judges that he might fo g 39 H.6.17 do mithout any Deed or (g) Writing shewed for it for if they should mistake in their Arrests or Imprisonments of suspected Traytors or Felons, should not have as much liberty as a Justice of Peace hath in criminal matters? or as the Judges have in his Courts of Justice in civil Actions, where the parties that millake, or bring their Actions where they should not, or Arrest one man in stead of another, are onely punished with Costs of Suit, or Actions of Falle Impriforment, but not the Judges or Justices of Peace; for howfoever foine Flatterers, when King Richard the Third having murthered his Nephews, and usurped the Crown, and fate one day in the High Court of Chancery, had in some of the Pleadings or Causes heard before him, alledged that the King could do no wrong; and fome of our Lawyers have fince fo much believed it. as they have reduced it into a kind of Maxime,

h Bratt. 1.2. Tit. contra tit Affi a. O Stamfords exposition of the Kings

cap. 22.

and given it a place in some of their Arguments quemeompe- & Reports; Yet Bracton in(b) the Reign of King Henry the Third, and Justice Stamford in the Reign of Queen Mary, did believe the King might unwillingly by Himfelf, or His Officers or Preregative, Ministers, de wrong, and declared the Law to be cap. 15. & both in Bractons and Stamfords time, that in Tit. Petition fuch Cases the Subjects where they have any mat-

ter of Complaint or Grievance, need not want their legal Remedies by Traverse, Monstrans de Droit, or Petition; the reason of the latter being, as Stamford faith, because the Subject hath no other Remedy against the King, but to supplicate bim by Petition, for the Dignity Sake of the Person. And a late Experience hath told us, how a Dispute betwixt our two Houses of Parliament, whether a Great Person accused of Delinquency might be Arrested and put under Custody, before his Charge or Accusation could be made ready, gave the Party opportunity to escape into the Parts beyond the Seas, and the Disputants leifure and time enough to agree of the matter; And it should be remote enough from any the suspition of Errour or over-credulity, for any man to think an Arrest or Imprisonment, by the immediate Command of the King in the case of Treason or Felony, or but suspition of either of them, not to be as legal as that of a Justice of Peace, made by a Lord Chancellor or Lord Keeper of the Great Seal of England, in his Name, and by his Authority derived under him. And those who will take out Sir Edward Coke's before mentioned Lessons, and enter themselves into that School, and be ready to make Affidavit of those his pretended Axioms, may do well before they do too greedily imbibe them, to remember that Maxime in our Law, as well as the Cafarean, that Neme - plus Juris in alium transferre potest quam ipse habet, No man can give unto another a greater Aaaa Power

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Power and Authority than he hath himfelf; and that Sir Edw. coke himself hath acknowledged. that a Derivative cannot be greater than the i Br. lib. 3. Power and (i) Authority from whence it was cap. 12. fed. deriv'd; And to give themselves and others the reason why the Kings of England should have a Comptroll and rectifying Super-intendency by the Common Law, Judges own confessions over his Admiralty and Ecclesiastical Courts, and not of his Common Law Courts, and other Judicatories, or may not fend his Prohibitions to Superior Courts where they intermeddle beyond their Cognizance, as he doth in the Admiralty and Ecclesiastical Courts, and as he may do in all inferior Courts; and by what Rule, Act of Parliament, or politive Law they are to do it in the one, and are restrained in the other; or left at liberty in the one, and not in the other; And whether he may not in Civil Actions, for fome reasons of State, Justice, or Equity do it, as well as in the Reign of King Henry the Third, after the making of Magna Charta it was done, when Bradon takes it for a Rule, that in adventy Tustitiariorum adomnia placita ex Jurisdictione sibi delegata pertinent ad eos audire querelas singulo. rum & Petitiones ut unicuique Justicia fiat, that in the Circuit of the Judges it belongeth unto them by their Jurisdiction delegated, to hear all men and their Complaints and Petitions. that Justice may be done to every man; yet if any profecuted or complained of without the Kings Writ or Precept, injuste ardains fuerit, fhall

shall be unjustly forced to answer Subveniturei
per tale brev. Domini (k) Regin Rex Vicecom. Salutem k Br. lib 3.
precipimus tibi quod non implacites, nec implaci. Trasi. de Cotari permittas talem de libero tenemento suo in rona. cap. 14
tali villa, fine speciali Precepto nostro, vel Capitalis sett. 4.
Justiciarii nostri; The King may relieve him by such a Writ, viz. that is to say, The King sendeth greeting to the Sherist, We command you, that you do not implead, or suffer to be impleaded such a one of his Free-hold, in such a Town, without Our Writ, Precept, or Command, or

of Our Chief Justice.

Or as that King did, where an Appeal was brought in the County of Tork for a Robbery, and remov'd per Preceptum nostrum, by the Kings command before his Justices at Westminster, which Sied. Coke says is always to be understood to be of the Court of Common-Pleas, and being heard, the Party appealed was acquitted; and having been appealed for the same Fact in the County of Esex, and after that Acquittal afore-said outlawed in Esex; the King quoniam Error prejudicare non debet veritati, to the end that Error might not prejudice Truth, did, Consilio Magnatum, by the advice of his Great Men, pronounce that Outlawry to be null and void.

And in another Case where the Justices Itinerant upon an Appeal brought for the death of a mans brother, and he that was appealed being a timorous man, had fled thereupon, so as by the command of the said Justices, he was afterwards outlawed, and the man that was said

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to have been killed, was found to be alive and in health; the King feeing that there was no just cause of the Utlary, did pardon it and the flight, and commanded that in a full County. Court where he was outlawed, the man faid to be killed should be produced, and that then eum inlagari faciat, & ad pacem Regis recipi, the Sheriff (hould in-law the Defendant, and receive him to the Kings peace, and publiquely proclaim that he was received into the Kings grace

and favor.

And if they will read Braden quite through, and diligently observe and compare one place with another, and that wherein he is positive and concludent, they need not go far to feek how easie it is to mistake Reason, and over run and reject Truths, as the Rabbies and Profelites of the Rebellious Affembly, call'd The Lone Parliament, did not long ago do, by fuffering their prejudice, fancy, or finister ends, to rove and catch a piece of that Ancient, Loyal, and Learned Author, to furnish out their disloyal Arguments and Purpofes, without any further reading or enquiry into him, where they may fee the contrary afferted, and abundance of Confutation of those, and many other Errors they were fo much in love with, and are fo willing to espouse.

The Authorities offered to prove the Opinion of Sir Edward Coke and the Judges in that Cafe of Prohibitions in Michaelmas Term, in the fifteenth year of the Reign of King James,

before-

before-mentioned, yielding, if well examined, no support to that debile fundamentum, weak and insufficient Thesis, or intended Foundation, and will as unfafely be relyed upon as those many Conclusions which he hath as to many things drawn from the counterfeit Modus tenendi Parlementum, (abundantly (1) prov'd to be so both by I Seld. Tit-Mr. Selden and Mr. Pryn) about the latter end of thes of Honor King Henry the Sixth, and from his over much Mr. Pryns admired, and too often cited, but suspected, the Animadverfo called Mirror of Justice, written by Andrew SirEdward Horne many hundred years after the Reign of Cokes 4th King Alfred, of much of the matters wherin Affer part of the Meneuensis, who lived in his Court, and wrote Institutes. of his Actions; Brompton and many of our old p. 1. 11. 6 English Writers are altogether filent, and as lit- 249. tle fatisfactory as the Resolution of himself in Trinity Term, in the fifth year of the Reign of King James, concerning a Commission to inquire of Depopulations, to be amongst other defects Suppos'd to be therein, that the said Commission was against Law; 1. because (m) it was in English, m Cokes 12 2. because the Offences inquirable were not Reports. Tri. mentioned in the Commission, but in a Schedule 5 Jacobi. annexed, the reason and authority whereof lies as hidden and difficult, as the most dark and envelopped Riddles and Anigma's of sphinx, and as unintelligible, as the most mystical Caballa of the opinionated Rabbins, and as unlikely to be affisted by any, either Law, or right Reason, as another Opinion or Hypothesis of Sir Edward Cokes, and others, That the King cannot create a Manors

Manor; when those many thousand Manors in England have not with their large Liberties and Priviledges, been granted by Act of Parliament, but by the Favor and Indulgence of our Kings, or by their tacite Permissions, where any of those Manors have, as parcel of some others, or otherwise been onely upheld by Custom or

Prescription.

All which, with many other of his Doctrines and Opinions, would not have been welcomed or careffed by the former Ages, who well unstood the difference betwixt the Edida and Re-Scripta Principum, the Edicts and Legal Mandates of Sovereign Princes, with the high esteem, respects and obedience is due unto them, and the Responsa prudentum of their Commissionated Justices, and the Reasonings and Dictates of those Disciples of refined Reason; and how. wide also is the difference betwixt Deliberation and things spoken of a sudden, betwixt Arguments folemnly made both at the Bar and at the Bench, and that which passeth from them obiter or in transitu, hastily, and without any premeditation, or in passage, or as circumstantial to some other matter, or when it was not subjectum Argumenti, the subject or material part of the Argument, but came in as foreign, or was not the principal Defign thereof; or was but as some of the Law Reports do mention other things to have been spoken onely ad mensam, as they fate at Dinner or Supper; or in their private Conferences, or per Auditum , by Hear-fay

or Report of another coming in from a Court, or Businels at Law, where they that made the Report were not present; neither were those Sons of Wisdomignorant, that Laws were to be so subservient to Government, as not to incumber the just means thereof, and the Power and Authority which should protect and take care of it.

For although Kings and Princes ought in performance of their Oaths taken at their Coronation, to make the Methods and Rules of their Covernments, where Justice and Reason shall perswade it to come up as near as they can Legum fuarum prescripto, to the minde and dire-Cion of their established and allowed Laws, and reasonable Customs of the Kingdom, and moderate and guide their Power, as Bradon faith, to the right end for which it was ordained, vet the Suprima Lex & Salus Populi, ne quid detriminti Respublica capiat, the Supream Law to heed above all things, next to the will and commands of the Almighty King of Kings, the fafety of the People, and Weal Publique, committed to their charge, wherein their own is not a little concern'd, being not to be neglected, enjoyns the care and observation of that great Principle in the Eternal Laws of Nature and right Reafon, that there ought to be in all Kings, Princes and Governors fuch a Power and Means extraordinary, as may answer the purpose of Government, procure Justice, relieve Necessities, and repel any the Incurfions of Dangers, which

present Laws, or the greatest fore-cast could never provide, or before hand arm against, when Time, Necessities, or Hazards imminent, cannot tarry for the popular or long deliberations or affent of a Multitude, who can fooner bring upon themselves a ruining and fatal Discord, than procure any help at prefent, and that to oblige Government to a close and pertinacious adhering to Laws or Rules already established, which can yield them no relief, or at the most none at present, may be as inconvenient and destructive, as to limit a Captain, Master, or Pilot of a Ship going to Sea, what Orders and no other he must observe, when Pirates or Enemies assaults unlooked for; the Furies of the merciles Windes and Seas; or those many other Misfortunes of which the Seas do produce as great a plenty as they do variety, shall rush or break in upon him, and must of necessity re. quire other helps or directions, and cannot always fayl by Card or Compass, or in fight of a conducting Pole-Star, but most sometimes for the preservation of himself, the Ship, and Passengers, lowr his Sayls, cut his Cables. or Main-mast, or throw Goods over-board, to be recompensed by those whose good and safety was procured by it.

Or might be as fatal as it would be to an Army, when a General or Commander of it, shall be pinnion'd and fetter'd with Instructions or Authorities ill calculated, and must not go beyond them, when their Cares, Arts, and Strata-

gems,

gems, are not to be before-hand prescribed by Laws, Instructions, or Rules of War, but are to be used and practised as Occasions, Opportunities, Advantages, or Disadvantages, Successes

Dangers, or Misfortunes shall advise.

And therefore if we look down from the hills of Time, into the valleys of the Ages past, and take a view of the Laws and Constitutions of our Princes, the Records and Monuments of their Justice, distributed by themselves, or the Judges their Substitutes, the weight of the Reafons of their Judgements therein, and the Obedience which the People have from Age to Age readily paid unto them, they that will not wilfully facrifice to a peevish Obstinacy, may see cause enough for our Kings as well to make use of extraordinary Helps and Remedies in order to Justice and the Weal Publique, as their delegated Judges have done, by that which they call Office and Discretion, or course of Court, and Equity, of Statutes, in many Causes, too many to be here instanced, when the Laws would too much streighten them, or not permit them to do that which Justice would require or expect at their hands, & to believe that the no unfaithful or unlearned Judges in the former Ages did not incroach upon the Liberties of the People, or wanted a Warrant of right Reason, when they had fuch a veneration and respect to the Prudence of divers of our Princes, their Reason and Necessities of State, and the preservation of the People, and in doing of Justice; as in the Bbbb fixth

n 6 R. I. fixth year of the Reign of King (n) Richard the Rot. 6 in re- First, Adam of Benningsseld and Gundreda his cept Scacca- Wife, having brought a Writ of Dower against rii.

ceps Scacea- Wife, having brought a Writ of Dower against Robert Mallivell and Pavie his Wife, for feven Carves of Land in Ravenefton, with the Appurtenances, in the County of Nottingham, of which the faid Gundreda had a Fine levied unto her in the Court of King Henry by Robert Mallivell, Father of the faid Robert Mallivell, and thereof produced the Chirograph, and alledged that the faid Robert the Son had differed them in the War or Rebellion of Earl John, the Kings Brother, and was with him in the War against the King at Kingeshage, and that by reason of the Seisin of the faid Robert by the faid Earl John, the Land was taken into the Kings hands, as Hugh Bardo witneffed ; but the faid Robert pleaded that he paid a Fine to the King for it, and for that Land to have his Lands again; and for that produced the Kings Letters to the Sheriff of Nottingbamshire, who attested the truth thereof; Et Dominus Cancellarius dicit quod ipfe accepit ab ore Domini Regis quod ipfe redderet Sei-Gnam terrarum omnibus illis qui diffeifiti fuerunt, per Comitem Johannem, & dicit quod ratum babelur, quod ipft diffeisiti fuerunt per Comitem 70bannem, & inde consideratum est quod magis ratum habetur quod Dominus Rex ore precipit quam quod per literas mandavit & quod Adam & Gnn. dreda babeant Seisinam fuam; and the Lord Chancellor witneffed that he was commanded by the King by word of mouth, that he should make

make Livery of their Lands to all which were diffeized by the faid Earl John, ( which would have required a good Warrant in a matter concerning fo many,) and faid that it was proved that they were diffeized by the faid Earl John ; and thereupon the Court delivered their Opinion, that what the King had done by word of mouth was more to be approved & credited, than what he had commanded by his Letters. And our Bracton, who ad netera Judicia (o) perscrutanda, as o Bract. in he faith, had used great diligence in the search Proemio de and perusing of the Old Records of the King- Legibus & consuctudidom, declareth the Law to be in his time, That nibus, Annon debet effe Major in Regno suo, there ought glia, & l. 1. not to be any Superiour unto him in his King. c. 8. fed. s. dom; fi autem ab eo petatur cum breve non currat (contra ipsum) locus erit supplicationi quod factum fuum corrigat & emendet; but if he do not Justice when as no Writ can be had against him, he is to be petitioned to do it; quad quidem si non fecerit satis sufficit ei ad panam quod Dominum expectet ultorem nemo quidem de factis (uis prasumet disputare, multo fortius contra fadum funm venire; which if he shall not do, it will be enough to leave him to God for a punishment; for no man is to presume to question or dispute his Actions, much more to contradict any thing which he doth.

And fince the Granting of the Great Charter of the Liberties of the People, & those Bounds which Regal Majesty hath been pleased to put to the Royal Prerogative, it appeareth, That in Bbbb 2 the

ram Rege Trin. 5.

p 1 E. 1. co- the first (p) year of the Reign of King Edward the First, it was adjudged and declared in the Court of Kings Bench, Quod non eft volunt as Regis quod Carta sua concessa scilicet de Pardonatione Vita tempore pratirito per ministros ipsius Regis disallocentur in prejudicium illorum quibus conceduntur; that it is not the Kings pleasure that his Charters of Pardon for the time past, shall be disallow'd to the prejudice of those to whom they (q) are granted.

q Hill. 3. E. 1. Rot. 1. E. I. coram

Rege.

In the third, and nineteenth year of that & Trin. 19. Kings Reign, it was declared and allowed to be Law, That Justiciarius non habet Jurisdictionem cognoscendi in aliqua loquela, nec capiend' aliquam Affifam, nifi per Dominum Regem, & ad ipfins voluntatem , & fi fecus fecerit videtur Curia quod de jure non fecerit; That a Justice or Judge hath no Jurisdiction in any Plea or Action, nor to try or take any Affife, unless it be allowed or permitted by the King, or by his Will and Pleafure; and if the Justice or Judge shall do otherwife, the Court was of opinion that by Law he could not do it. In the nineth year of the Reign of that King,

it was adjudged, That neque Barones quinque Portuum, meque aliqui alii in Regno posunt clamare talem Libertatem quod non respondeant Domino Regi de contemptu fibi facto, ubi Dominus Rex cos adjudicare (r) voluerit; Neither the Barons of the Cinque ports, nor any other in the Kingdom

can clame a Liberty not to be answerable to the King for any contempt where he will Call them to accompt for it. In

7 Paf. 9 E. 1. coram Rege Kane Rot.

In the eighteenth year of his Reign in the Case betwixt the Bishop of Carlisle and Isabell de s 18. E. 1. Clifford, and Idonea (1) de Leybourne her Sifter coram Rege. concerning the Advowson of a Church which he Claimed by a Feoffment thereof made by King Richard the First, it was alleaged to be Law, That nemini liceat Cartas Regias, indicare niss Regibus, That no man ought to judge the

Kings Charters but themselves.

In Hillary Term in the twentieth year of the t Hillary 20 Reign of that King, in the great Case and E. 1. coram Pleadingi betwixt the King and Gilbert de Clare Roge wallis Earl (1) of Gloucester and Hertford, and Humphrey de Bohun Earl of Hereford and Effex, for that the faid Earls had upon a Controversie betwixt them for Certain Lands in Brecknock, and in the Marches of Wales armed their Tenants, and with Banners displayed, invaded each others Lands after the Kings prohibition, when by a Commission granted to William Bishop of Fly, William de Valence and others, the King therein declared, that although the faid Earls should in the meane time agree, yet if any thing should be attempted in prejudicium fen Contemptum vel etiam la fionem Corona (wa & Digni tatis Regia, vel contra pacem, &c. post inhibitionem Suam pradicto Com. Glouc pro statu et Jure Regis per predict Episcopum et sotios suos inde rei veritas inquireretur, to the prejudice, or in Contempt or hurt of his Crowne or Kingly Dignity, or against the Peace, after the Inhibition made to the Earl of Gloucefter as aforesaid, it should for

the State and Right of the King be inquired by the Bishop and the rest of the Commissioners. to the end the truth thereof might be found out; it was in that Plea or Proceedings declared for Law and not at that time denyed, Quod pro communi utilitate per Prerogativam fuam in multis Cafibus Rex est supra omnes leges & consueindines in Regno suo usitatas, that the King is by his Prerogative in many Cases for common and publick good above the Law or any Customs used in the Realm; and when exception was taken by the Earl of Gloucester to the Writ of Scire Facias, which he alleaged, ought to be a judicialWrit issuing out of a Process before had. and not out of the Chancery as an original Writ Videtur, it feemed faith the Record confilio Domini Regis to the Kings Councel (which in that Cafe. were the Judges of the Court of Kings Bench) quod ex quo incumbit Domino Regi specialiter pro conservatione pacis sua et salvatione populi sibicommissi. quam cito rumor de tam enormi transgressione contra inhibitionem suam facta ad ipsum pervenerit in continenter, debetur Super hoc veritas inquiri per omnes vias, quibus citius fine Juris offenfa, & per breve illud propter exhibitionem celeris Justitie unicuique indigenti prestando festimus patet remedium, quam per alignod alind breve adhue in casu isto provisum five formatum ad intollerabilia mala evitand. 6 impediend. veluti homicidia, sacrilegia, incendia depradationes, et alia enormia que preter mala prius illata emersisse potnerunt a casu, nisi celerius remedium apponeretur in facte predicto: That forafmuch

much as it specially concerneth the King for the keeping of the Peace and weal of his People committed to his charge, as foon as ever he shall be informed of fo great an offence against, or contrary to his prohibition, the truth thereof ought to be enquired by all the ways and meanes, by which without contradiction or distarbance of the Law, it may soonest be done; and that by that Writ for the more speedy doing of Justice to every on that needed it, there was a more speedy remedy afforded than by any other in that Case already formed or provided, to prevent and hinder fuch intollerable mifchiefes, as Manslaughter, Sacriledge, burning of Houses, Spoils, Depredations, or Plunder, and other enormities; which besides the evils before Committed, might happen or enfue, if a sudden remedy in fuch a case should not be applyed: Et etiam quod Dominus Rex qui est omnibus et Singulis de Regno suo Justitia debitor non potuit in boc casu nisi Injuriam Corone sue intulisset dissimulasse quin concessisset breve per quod citius, et celerius pervenire poffet ad cognitionem veritatis rei pred. cum petitum fuerit; And likewise that the King, who to all and every of the people of his Kingdom is a debtor of Justice, and ought to do it, could not in this case unless he should do an injury to his Crown, diffemble or forbear the Punishment thereof, or abstain from the granting of aWrit when it was required, whereby he might the sooner come to the knowledge of the matter aforesaid; and it was by the aforesaid ludges

Judges of the Kings Bench adjudged Quod brive predictum in casuisto & in casibus consimilibus est necessarium et rationabile, that the Writ aforefaid was in that Cafe and the like necessary and reasonable: And as to what the Earl of Gloucester had alleaged that it ought to have been a Judicial Writ, videtur consilio Domini Registit feemed to the Judges that Dominus Rex a quo omnes miniftri fibi fubjecti recordum habent eft superlativum et magis arduum recordum et supra omnes ministros [nos et processus et record. rotulorum pracellens; the King under whom all his ministers do derive their Authority to make their Records, bath a more high and superlative Record excelling that of all his Ministers ( his Justices being uCook 2 par. by Sir. Edward Cook (4) fo ftiled, ) Et etiam antequam Dominus Rex inhibet circum picit et considerat Indicio interiori propter utilitatem communem ut evitetur deterius quod oriri posit et subsequiex malo incepto nisi inhibitio interveniret. et sic procedit inhibitio ex premeditato Judicio conscientia Domini Regis propter bonum pacis : And also that the King doth before he maketh his inhibition forecast and consider within himself what may be done for the Weal publick, to the end that he may prevent a worfer evil or mifchief which might arise, or be the consequence of an evil beginning, if he should not have made fuch an inhibition; And therefore that Inhibition did proceed out of the Judgement and dictates of the Conscience of the King for the Peace and welfare of his Kingdom, contra qued

Institutes.

Fudi-

Judicium f quis prasumpferit attemptare quanto citius et debitus possit habere processus ut super hoc convincatur veritas super delinquentem in boc casu tanto honorabilius est Regi Majestati et regno et populo utilius et magis necessariums which Judgement, if any shall resist, or contradict, by how much speedier a due Process may be had for the Conviction of the Offender, by so much the more Honorable it is for the Kings Majesty, and the more profitable and necessary for the People and Kingdom: Per quod videtur in bac parte quod Inbibitio, procedit proprie et Judicio aquo predictum breve quod vocatur. Scire facias debite sumi potest maxime, cum res supradicta specialius in boc casu tangat Dominum Regem Coronam et Dignitatem quam aliam tertiam personam; By which in this Caufe it appeared to the Judges, that the Inhibition was duely and well granted, and had its Original from the Judgement (of the King ) from which the aforefaid Writ, which is called a Scire Facias, was deduced, especially when the matters aforefaid, did more concern the King, his Crown, and Dignity, than any third Person.

And it was the Opinion of the Judges of the Court of Kings-Bench, in that before mentioned judgment, in the three & thirtith & four & thir-w Mich. 3. tieth year of the Reign of that King, in the Case & 34 E-13 betwixt the Prior and (w) Bishop of Durham, in Banco that any ordinance, award, or acknowledgement made Regis Rot. in the Kings presence, and by him affirmed, was to be 103. more believed; and to have agreater force, than a

Fine

Cccc

In Trinity Term, in the nineteenth year of the

Fine levied before his Justices, conformable to the Civil Law: which faith that Principis x Farinaci- dicto fides adhibenda plenifima fi Officii (x) ratione m d qual. aliquis a fe vel coram fe adum vel geftum, effe verbo 63. cap. 3. vel literis atteftatur; An unquestionable Faith, " 80 980 is to be given to what in the Office, or Affairs 139. of the King, shall be done by, or before Him,

attested by his Word or Letters.

Ret. 174.

Reign of King Edward the second, in a Writ of y Trin, 19 (y) Novel Diffeifin, brought by Ifabella, the wife of E. 2. coram Peter Crok, after the Kings Writ of Prohibiti-Rege Glouc. on to proceed; Rege inconsulto, obtained by the Bishop, for that he pretended it to have been forfeited to the King, and granted unto him, faving the Reversion, and She replying, and issue being joyned, and two hundred forty pound Damages given: and the King having afterwards fent his Writ to Proceed; and the Bishop bringing his Writ of Error, and Errors being affigned; amongst which one was that the King understanding that the Judges had taken the Assise, and given Judgement, had sent another Writ to Richard de la Rivere, one of the Justices in the Commission, commanding him that Si ita effet, that if it were fo, he should fend the Record and Process to the King; and that the faid Justices, post receptionem brevis predict nullam potestatem in hac parte habentes ad predidlum breve Regium nibil considerantes Erronice. et minus rite processerunt ad Judicium predict reddend. &c. After the Receipt of the Writ afore-

aforesaid, had no Power in that behalf, but had erred, in not regarding the Kings Writ, and . proceeded illegally;unto which the faid Ifabella replying, that after the taking of the Affise the King had fent his Writ; which was inrolled in the Record that the Justices should Proceed. Cum omni celeritate qua de fure et secundum legem et consuetudinem Regni Anglia; with as much speed, as by the Law and Customs of England. they might; Quibus recitatis et plenius intellectis Record et brevibus predictis videtur Curis quod ex quo pretexiu illius brevis eis directi de proceden do ad Indicium, &c. Quod eft de posteriori dato quam predictum brevede venire faciend. Recordum et Processus, &c. Per quod breve de venire faciend. &c. Potestas Justic. eis extitit ablata nec in eadem brevi de procedendo ulla mentio fuit de allegatione ipfins Episcopi predicta nec de eo quod Dominus Rex. alias eis mandavit quod poft Captionem Affife, predit ad Judicium inde reddend.inconsulto Rege minime procederent ad Judicium preditt reddend. erronice et fine warranto processerunt; Upon view, and due consideration of which Record. and Writs aforesaid, it appeared to the Court. that the aforesaid Justices had by colour of the Writ of Procedendo, which was of a later Date than the Writ of Venire Facias; to cause the Record and Proceedings to be brought before the King, and that by that Writ of Venire Facias, the Power of Proceeding was taken from the aforesaid Justices, nor in the said Writ of Procedendo, was any mention made of the Bishops Ccca aforeaforesaid Allegation, nor of the Kings former Command, that after the taking of the Affife they should not without Advising with the King, Proceed to Judgement, and that by fuch a giving of Judgement, they had Proceeded Erroniously and without Warrant; whereupon and other the Errors alledged, the Judgement was Reversed, and the Seisin of the Land adjudged to the Bishop.

z Trin 3. E. 3. coram Rege. Sutb. Rot. 9.

In the third year of the Reign of King Edward the third, the Bishop of Winchester being Attach. ed to (2) Answer the King; Quare decessit a Parlemento tent' apud novam Sarum abfque licencia Regis & contra inbibitionem Regis, et in Regin contemptum: Wherefore he departed from the Parliament Holden at New Sallbury withour Licence of the King, contrary to the Kings

Inhibition, and in Contempt of the King.

Episcopus dicit, quod ipse est unus de Paribus Regni, et Pralatis Regni, et eis inest venire ad Parlementum Domini Regis summonit. Et pro voluntate Domini Regis cum ipse placuerit; Et dicit, quod siquis corum deliquerit, erga Dominum Regem in parte aliqua in aliquo Parlemento debet corrigi & emendari, & non alibi in minor Cur' quam in Parlemento per quod non intendit quod Dominus Rex velit in Cur' bie de bujusmodi transgressione & contempt' fact. in Parlemento responderi. &c. To which the Bishop pleaded that he was one of the Peers and Prelates of the Kingdom. and that they are to come to the Parliament of the King when they are summoned, when he

he pleafeth, and that if any of them should offend the King in any thing, the King ought to correct or call them to accompt for it in Parliament, and not elsewhere in any lesser Court. Wherefore he hoped that the King will for any such offence or contempt cause him to an. fwer in Parliament: To which the King's Attorney replyed. Quod licet Regi de hujusmodi transgressione sectam facere vel delinquentem punire in quacunque Curia fibiplacuerit, &c. Et Episcopus e contra ut prius ideo datus est dies. That by Law the King may profecute against a Delinquent in whatfoever Court he pleaseths which the Bishop denied as aforesaid, and

therefore further day was given, &c.

King Edward the second, having by his Letters Patents granted to Maurice Brownesword (a) a Mich. 5 E. Officium Custod. Ulnagij în Anglia & postea ip. 3. coram Refum inde amovit et contulit dictum Officium Nicholao Sherlock, unde Mauricius per petitionem Regi porrettam , o in Bancum Regis miffampetit. quod didum Officium ei restituatur. The Office of the Aulnage in England, and afterwards difplaced him, and granted the faid Office to Nicholas Sherlock, and Maurice Brownfword having thereupon exhibited his Petition to the King, which prayed that the faid Office might be reftored unto him, and the King having fent it to the Judges, King Edward the third his Son notwithstanding in the fifth year of his raign, mifit breve fuum Juftic quad non vult ea irritari, que Pater fuus in boc fecit & pracepit,

cepit quod supersedeant quou que alind inde ordinaverit, oc. sent his Writ to the Justices, declaring that he would not have that to be made void which his Father had done, and commanded them to proceed no farther therein untill his further order.

In a Judgment given in the Court of Kings
b Paj. 10E.3 Bench in Easter Term, in the tenth year (b) of
soram Rege, the Raign of the aforesaid King, upon a Taxation or Assessment upon the County of Hertford, for the wages of Hoblers and Footmen;
It was declared, Quod nihil renovandum seu emendand quod fastum fuit per Regem, that nothing
was to be revoked or amended which was done
to Pass. 10 E. by the King, and in the same Term and year, (c)

3.coram Re- Super prolationem. Recordorum & Rotulorum Cuge. Wilts.

ria, & al. Dominus Rex misst breve suum Justic
Rot. 50.

mandando quod nibil agerent in prejudicium su
ex hereditationem Domini Regis, sed quod supersederent in negotio predicto nibil inde faciendo inconsulto Rege, upon producing of the Records and
Rolls of the Court, the King sent his Writ to
the Justices, commanding them that they should
do nothing in his prejudice or disherison, and
that they should stay and proceed no further
without advising with him.

In Easter Term in the forty sixth year of the d Pas. 46. Raign of King Edward the third, (d) Thomas Bi-E.3. Glone. shop of Durham was attached ad respondend. tam Rot. 33. co-Domino Regi quam Gulielmo sil. Henr' de Aslokey, ram Kege. quare in placito. erroris in utlagaria ad sectam tam Katerine qua suit UxorWilli' de Kilkenny quam ad

Sectam

fellam Dni' Ept' infra libertatem Episcopat' Dunelm non misst Recordum ex Mandato Regis in Bancum Regis, to answer the King as William the Son of Henry of Aflokey; wherefore upon a Writ of Error brought to reverse an outlawry as well at the Suit of Katherine which was the Wife of William of Kilkenny, as at the Suit of the Bilhop within the liberty of the Bishoprick of Durbam, he had not fent the Records as the King had commanded, into the Court of Kings Bench, and upon a fecond Writ commanding him to do it or to shew cause, which was delivered at his Castle of Auckland; and a third Writ of the like Tenor delivered to the Bishop himfelf at Waltham Crofs, Spretis mandatis record. & processus non mist, nec causam significavit quare id facere noluit, but disobeying the Kings commands had neither fent the Records and Process, nor shewed any cause why he did it not. Episcopus dicit quod nulla brevia ei liberavit apud Dunelm' & qued ad illud apud Waltham retornavit quod ipfe eft Comes Palatinus & Dominus regalis cujusdam terre vocat le Bishoprick de Durham, & habet omnia fura regalia que ad Comitem Palatinum & Dominium regalem pertinent per fe Juftic' & Ministros suos ibidem excercenda ac Juftic' (nos proprios, viz. Coronatorem & Cancellar & Cancellariam & breviasua propria ibid' de Cancellaria sua emanantia & quod ministri Domini Regis ad aliqua officia sua exercenda ibidem in aliquo ad omnia com placita se non intromittant realiz et personalia que ad comitem Palatinum pertinent infra terram præd' 6 quod

quod babet Justic. Suos ibidem et ad assignand' Justic per commissionem et ad Error corrigend, per ipsum E-pisco pum vel alios Justiciar suos tam ad sectam Domini Episcopi quam aliorum, & pradietus Willielmus replicavis quod non esse consonum rationi se ipsum de facto & prosecutione proprijs fore Judicem cum proprie ad Regiam Majestatem in omnibus Cansts ortis inter subditos Jurisdictio pertinet dinoscere, et licet ad aliquam Personam per privilegium speciale de causa cognoscere indultum suit si substitutus in exhibitione Justita descerit Errorem per superiorem, et non per substitut corrigi debet et super boc dati sunt dies de termino in terminum.

To which he pleaded that no Writs were delivered to him at Durham, and to that which was delivered unto him at Waltham, he had returned that he is Count Palatine and Lord of the Royalty of the Lands called the Bishoprick of Durham, and hath all the Rights and Regalities which do belong unto a Count Palatine, and that Royalty there to be exercised by him and his Ministers and Justices, that is to fay, hath a Coroner Chancellor and Court of Chancery, and that the Kings Officers do not in any thing intermeddle therein, and that the faid Bishop as Count Palatine hath there likewise his Court and Justices of Common-Pleas, as well real as personal, and power to assign by Commission, Justices to correct and reverse Errors committed by him or any of his Justices, as well at his own Suit as others.

Unto which the faid William replyed, That

it was not reason that he should be Judge of his own Actions, when as properly it belonged to the Majesty of a King to determine of all Causes betwixt his Subjects; And although he in favour granted to some Person a special priviledge to hear and determine Causes, yet if any substituted by him do fail in the distribution of Justice, the Errors shall be corrected by the Superior, and not by the Substitutes; whereupon surther days were given

from Term, to Term.

Nor was the Duties of Subjects fo worn out, but that so much respect was in those better Times given to our Kings Royal Protections, granted to such as were not employed by them, as the Laws and reasonable Customs of England did allow the protected Persons in their Lands and Estates, to bring their Actions against the Infringers or Disturbers thereof, as in the Case of Roger de Limecote against (e) the e 6 R. I. Sheriff of Liecefter, in the first year of the Reign Rot. 1. in of King Richard the First, for disseising him of dorso. two Knights Fees; Nicholas Talbot against William Prior of Dunftar , in the eight and thirtieth year of the Reign of King Edward (f) the Third; f Hil. 38.E. of Walter Warr against Gervase Wretchey, and John 3.coram Re-Parkey in the same year, and of many others in ge Somer rot the faid Kings Reign; and no Pleas in Bar, or Wills. in alledging Illegality put into the same, but in dorso. others some collateral Pleas and Defences made by Releases, or the like.

For those Lovers of their Countrey, and ho-Dddd nor

nor of their Kings, did not think, as some would fondly and untruly affert, that all the Royal Protections granted by them, had at the first no better an Original or Foundation, than an Imitation of the many Protections and Priviledges granted by our Kings and Princes, to Bishops, Monasteries, and Religious Houses, did not believe that our Kings could not respite for a while the payment of moneys due unto any of their Subjects, or do as much as amounted to it, when King Edward the Third in his Wars with France, and great want of Moneys, did about g Et Rot. Pat (g) the thirteenth year of his Reign, revoke di-

21.

& Rot, clauf. vers Affignations for the payment of Moneys 33. E. 3.m. due unto private and particular persons, until he should be better enabled to pay them. And it was about the twelfth Year of the Reign of King James, in the Grand Case of Boltons Complaint against the Lord Chancellor Ellesmeere adjudged in Parliament, That upon a Bill, called A Bill of Conformity, exhibited in Chancery by a Debtor against bis Creditors, for not accepting of his Offer of as much satissaction as he was able to give them; and for refusing thereupon to permit him to enjoy his liberty, the Lord Chancellor, or the Lord Keeper of the Great Seal of England, might by Injundions prohibit and stay all Suits at the Common Law, commenced by him or any such refractory Creditors.

For our Courts of Chancery, Kings-Bench, Common-Pleas, and Exchequer, have in their feveral fubordinate Authorities, not feldom mitigated and reduced

reduced the high and unreasonable Fines incertain, demanded by divers Lords of Manors of their Copy hold Tenants for their Admissions, unto a more reasonable Rate of two years improved Value, and enforced them to accept it. And Sir Edward Coke in his Comment upon Magna Charta, would not bring into the meaning of the Clause of Nulli negabimus, vel differemus Jufliciam, That the (b) King would not deny, or hCokes Comdelay Justice such Protections as do appear in thement upon Register, and are warranted by the Books of Law. Magna And although in the eighth year of the Reign of 29. King Henry the Sixth, it was in transitu, and by (i) the way faid by Cottesmore, a Judge in the Case; 8 H 6.19; concerning the Priviledges of the University of a. & b. Oxford, That the King cannot grant that a man shall not Implead, or have any Action against another; Yet it was at the fame time declared to be Law and right Reason by Babington a Judge. That to a Lord of a Manor, Conusance of all Trefpasses done within his Lordship, may be granted by the King, and that a Plaintiff shall be bound to bring his Action accordingly; and that in that Cafethe King bath not fore-closed him of his Adions so as our Novelists, and such as invent all the Oppofitions they can against the just and legal Authority of their Sovereigns, may do better to acknowledge, that howfoever it was the opinion of some of the Judges in the Reign of King Henry the Sixth, That if any should Arrest a man by the Kings Command, (when all men Arrested are so by the Authority of the King and his Dddd 2

Firzberbert Tit. Mon-Arans des Fairz.

5. Ret. 89.

Writs, or Process ) an Action of False Imprisonment k 16 H. 4. might be brought against him that (k) obeyed the Kings Command, although it was done in the presence of the King; Yet the whole Tenor and Meaning of that Cafe, and that fudden Opinion arguendo, or by way of instance deliver'd thereupon, was no more, but that fuch a Command ought to be attended with some Specialty, or cause shewed.

And so little did the Judges of the Court of Kingi-Bench in Trinity Term, in the ninth year of the Reign of King Henry the Fifth, intend or think it fit to subject to the humor of any froward or undutiful person, the important Affairs and Service of the King; As William Reedbead ITrin. 9 H. and Nicholas Hobbesson (1) Purveyors for the King, having taken forty Quarters of Malt for

the Kings use, for the Victualling of the Town of Harfleet in France, from William Atkin; he brought his Action of Trespass against them for the taking away of fifty quarters of Malt from him; Unto which, as touching the supposed Trespass, and ten quarters of Malt, they pleaded Not Guilty, and took Iffue thereupon: And as to the forty quarters of Malt refidue, pleaded and produced the Kings Letters Patents, dated the twentieth of January, in the third year of his Reign, and that he thereby did Affign them joyntly or feverally, to take a thousand quarters of Malt for the Victualling of the Said Town of Harfleet, where-ever it might be

found, as well within Liberties as without, (the Lands of the Church onely excepted) upon rea-

fonable

(575)

fonable payment by the King for the same; and to provide sufficient Carriage by Land or Water to the City of London: And in regard that they had notice, that the faid William Atkin might well bear and afford the same beyond his necessary Occasions, and did fell divers quantities of Malt in the Markets: The faid William Reedhead and Nicholas at the time of the pretended Trespass, did to the use of the King, as aforefaid, take the faid forty quarters of Malt, & charged the faid William Aikin on the Kings behalf, by vertue of the Kings faid Letters Patents, that he should carry the same to London, and deliver it to Robert Barbet, who should pay him as well for the faid forty quarters of Malt, as for the carriage thereof; which Robert Barbet was affigned by the Kings Letters Patents to receive it for the use of the King, and transport it to Harfleet, and to make full payment for the faid Victualling of the Town aforesaid and that the faid William Atkin did carry the faid Malt to the faid Robert, and received of him full payment for twenty quarters of the faid Malt, and the carriage thereof, and that the faid Robert Barbet assigned the said William Atkin within six moneths after to be paid for the faid other twenty quarters at London; which forty quarters of Malt so taken as aforesaid for the Kings use, came to his use at Harfleet aforesaid, unde non intendent quod Cur. hic in loquela predicta ad prosecutionem predicti Will. ulterius versus eos procedere velit, ipfo Domino Rege inconsulto, & petunt

tunt auxilum de ipso Rege quod eis per Cur Concessum est. Wherefore they hope that the Court will no farther proceed in that Action until the Kings pleasure shall be known, and do pray the Aid of the King therein, which by the Court was granted unto them. Et super boc dies dat. est partibus predictis coram Domino Rege in fatu quo usque, xv. scil. Michaelis ubicunque, &c. Et didum est prefato Willielmo quod interim sequatur penes Dominum Regem de licentia habend. ad procedend. ulterius in loquela predicta si, &c. Et dies dat. ut Supra usque Oct. Hillarii, dinde per seperales dies or Terminos u/que Octab. Scil. Michaelis. Whereupon Day was given unto the parties aforesaid, in the state or manner as now it is, until fifteen days after Michaelmas; And the faid William Atkin was commanded, that in the mean time he should petition the King for leave or licence to proceed, if he would, in the Action; At which day, time was further given to the parties aforefaid, in manner as aforefaid, until eight days af. ter St. Hillary; and the faid Wil. Atkin was commanded that he should petition the King, if he would, for leave, as aforesaid; At which day and time, day was given to the parties in manner as aforesaid, until Eafter Term then next following; and the faid William Atkin commanded if he would, to petition the King as aforesaid; At which time further day was given to the parties aforesaid, until Trinity Term next following; and the faid William Atkin commanded to petition the King, as aforefaid; At which time further further day was given to the parties aforesaid, until eight days after Michaelmas; and the said William Atkin was commanded to petition the King, as aforesaid; And no further Proceedings were had thereupon, as appeareth by the Roll, where otherwise it would have been entred.

Neither could our less contentious & turbulent Fore-fathers, probably be willing to give lodging or entertainment to any fuch vain and unwarrantable conceits, as do now too frequently attempt an invasion upon the Lex Regia of their Soveraign, or necessary and legal Rules or Methods of Government, or the very Attendance upon the Person of the King, and his many times indispensable Affairs, in order to the good and fafety of his People, or that upon Licence demanded to profecute any Action at Law against any of his Servants, it should be any such delay of Justice, as to furnish out their suppofed matters of Grievance or Complaint, that a little time or respite should be given to any of the Kings Servants, either to give fatisfaction or answer the Action : When Bracton in the Reign of our King Henry the Third, declared it to be no new or evil Law or Custom of the Kingdom, that in the Kings Commissions to the Justices Itinerant, or Assizes, there (m) was an m Bratt. lib. Exception of Causes, wherein qui profect funt in 3. de Actioservitio nostro, those which were gone, or fent nibus, cap. in the Kings service were concerned, or that 11 fed. 9.

fuch a reasonable part of time or respite given,

should nurse up or encourage any discontent;

when the Judges in an Action depending in the Court of Common-Pleas, against one that was none of the Kings fervants, or employed by him. were in the Cases of an Esloyn, de male lecti, of fickness, to cause a View to be had of the fick Person; and if really sick, to assign him a reafonable time to arise and appear before them; or if he had been viewed, and had malum tranfiens, an intermitting Disease; or if a Languer. or Languishing were testified, and such an Essoin were cast before the Justices Itinerant in their Circuits, where they had no power to receive any fuch Effoin, mittere possint ad ipsum ut faciat Attornatum, they might fend to him, which could not be done suddenly, to make an Attorney to answer for him.

Or that our Kings should be able to Protect and Priviledge such of the Clergy as in former times were, as Clerks or Officers in Chancery employed in his Service, as to send, notwithstanding the then great power of the Bishops, their Diocesans, his Writs De non Residentia, of dispensing with their Non-residence upon their Benefices, and command them, as hath been before remembred, not to be sequestred for their Absence whilest they were employed in their Service; or if sequestred, to unsequester them; or if Fined by any Ecclesiastical or Church Censures, that such Fines should not belevied; which

n Register of was in those times not (n) believed either by the Writs, 58 b. Layety or the Clergy themselves to be illegal; 659 a. And in the later of the said Writs, that such a

Seque-

fequestration was in juris Corona & libertatis & privilegij praditi orum laftonem manifestam, to the prejudice of the rights of the Crown, and violation of the liberty and priviledge aforefaid, & bujusmodi vijs & modis, quibas poterint pracanere & libertatem , & privilegia sua pradictamaun tenere supientes. And that they were desirous by all the ways and means they could, to hinder such doings fo prejudicial unto them, and were refolved to maintain the Liberties and Priviledges of the Crown.

And not be able to protect his Houshold and domestick Servants, in whose daily service and continual attendance, both our Kings and their Subjects were more concerned than they could be by any the fervice or attendance of the Officers or Clerks in the Court of Chancery.

Which the Lordsin Parliament did fo well understand to be a Right inherent and due unto Royal Majefry; as in the three and fortieth year of the Reign of Queen Elizabeth, they did in the Case of William Huggen one of the Queens Servants arrested upon an Execution. fend the Gentleman-Ufher attending upon their House to the Prison of the Fleet, to bring him before them? and upon view of Precedents of some of their own Servants delivered (p)though p 43. Eliz. none of any the Kings or Queens did in conformity to the reason thereof, cause the Plaintiff upon the Defendants promife to pay him, to releafe him, and the Under-Sheriff being committed to the Fleet, was three days after upon Eeee

his

his Petition discharged.

9 1. 7ac+

bulati i.

And in the first year of the Reign of King Tames, The(q) Earl of suffolk Lord Chamberlain of the Kingi Houfe, did procure Nicholm Reading, one of his Majefries Servants arrefted by an Execution, at the Suit of Siz Edward Hales. to be brought before the Lords in Parliament by a Writ of Habens Corpus, and fo by the Plaintiffe confent released, the Order mentioning that flich an Arrest was contrary to the honor

and priviledge of that Court.

Or that not only the Judges of the Superior Courts 80 the Juffices of Peace can as they have done it antiently and commonly, imprison men for Contempts of them or their written Orders or werbal Commands, without which they power could not Tweet Jurisdillionem, uphold that Authority which the King had given them but the Conflables of every Parill in London, whose Offices and Authority at the first were (faith the judicious and learned Lambard) but as the fingers to the hands, or Tambar d body (r) of the Constable of England, a great

Eirenarch,et Officer of the King and his Crown, can in their trall. de of Night-watches command better men than themficio Confla- felves to the Compters or London Prifore, there to lodge the remainder of the night among the debauched or unruly fore of people, calld Rati, or Night walkers but for angring his worthip, or not believing that he is a Prince of the Night the Kings Image, and none of the imaller parcels

of mortality, and shall have fo much conni-

vence

vence at his no feldom committed Follies, as no other Habeas Corpur shall be granted to the injured person, that a submissive paying of his Fees of imprisonment, and procuring himself as well as he can to be discharged by the greater discretion of the Lord Mayor, or an Alderman, before whom he is the next morning to be brought, with his, not to be discerned Fault or offences, and if he should seek afterwards to be recompenced for such an affront, is to expect as little favour as may be for himself, and as much as may be for his adversary.

And that the King under whole Power and Authority they acted, should not be able by his own immediate command or the Warrant of some of the great Officers of his Crown or Houshold, to punish by imprisonment, any contempts committed against himfelf and his foveraign power, by the arrelling of his domestick and houshold Servants without Licence, who are neare unto his person. and imployed in his hourly or daily fervice or attendance or that his power and Authority should not be efficacious or valid in his own cafe or immediate concernment, and should be valid and sufficient to punish such as either contemned or abused his Justices and Servants extraordinary ( who are more remote from his person) in the administration of his Justice.

As when Enflace de Parler and his (1) brother 5 21 E. 1 were by King Edward the first, in the one and twentieth year of his Reign, committed to the

Ecce 2 Tower

Tower of London, for abusing and striking in Westminfter Hall William de Bereford, one of his Justices of his Court of Common-Pleas, And 21. E. I. King Edward the third by his Justices and Authority, punished the Bayliffs of Infwich be the Forfeiture and Loss of their places, seised. the Liberties of the Town, and delivered the Mich. 18. Custody thereof to another, (t) during the

Rege. Rot. R62.

E. 3. coram Kings pleasure; and made the Bayliffs of the Town to deliver in Court their Staves of Office, for that they had fuffered an unruly multitude to feast and revel with certain Malefactors, condemned by the Justices of Assize, and after their departure made a Mock gam e of them in fitting upon the Tribunal, and Fining them and their Clerks ...

Or that any should think it reasonable, or no differvice of the King, or his not to be incumbred Affairs, to arrest any of his Houshold Servants without a Licence first obtained.

And shall at the same time decry or declaim against the Arresting of a Judge sitting in his delegated Court of Justice, or travelling in the Circuit, by and under the Kings Commiffion, at the Suit of any private person; or the Arresting and Imprisonment of an Admiral or Vice Admiral going to Sea, or a Commander or Governor of a Castle, Fort, or Garison, upon the like occasion, and think it reasonable that the King in reference to the Weal-pub. lique, in those his affairs and concernments should by priviledge protect, and shelter them.

A right understanding whereof, and of that which hath been before alleaged, and the reafons supporting those Judgments of the not ignorant or unworthy, but very learned, grave, and upright Judges, in those former Ages and Times, and of the Duries, Honor, and Respects, which were and ought to be paid to the Soveraignty, just and necessary means of Government affented unto by our Lawes, and reafonable Cuftoms of England, and in praxi & ob-Servantia junioris Evi, in the practife and course of Law in the succeeding Ages, not denied by any politive or well interpreted Law, may grant a Procibition, and give a Checque or Restraint to those opinions so of late hatch'd; and hug'd against too many of the Actions of Authority, in order to Government, and the Weal-publique; the necessity of preventing Evils before they happen, or diverting, abating, or leffening them after they are happened, and invite them to forfake their overmuch adoration of Sir Edware Cokes aforefaid Errors, and believe Sir Thomas Ridley a Doctor of the civil Lawes, and no stranger to our Common-Lawes, who no longer ago than the beginning of the Reign of King James, in his Book intituled A view of the Civil Ecol fiaftient, and Temporal Laws of this Land , faid, that it was an ordinary Complaint as well in the Temporal, u Sir Thom. Ridleys view as the Giwil and Ecclesiastical Courts, that our of the civil & Lawes (") were far otherwise interpreted than Ecclefiaftical they were in former Ages, and declared that Lames, 210

the 211.

the King by communicating bis Authority to his Judges to expound his Lawes, doth not theraby abdicate the fame from bimfelf, but may affume it again une to himfelf, when and as often as be pleafeth.

And was long before that so believed to be

confistent with our Magna Chasta, the doing of Justice to his people, and the dernier resort or ultimate Appeal ( as Saint Paul did unto Ca. (ur) and fo defirable by those that could have remedy no where elfe, as Reginald Baffet having great Suites with William de Harcourt, Themas de Aftley, and other Knights that held of w Rot. pat. the Honor of Leicefter , (w) did in the eleventh year of the Reign of King John give as an oblation, two Palfreys to the King, that the Cause might be heard before him, wherein he got the better, as appeareth by a Fine of 200 Marks the next year after paid into the Exchequer by

11. 0 12.

Fohannis.

3.

For certainly in that great and most prudent Judgment and Justice of Solomon, in the Case of the true and falle Mother claiming the child,

the faid Thomas de Aftley pro falso clamore, for not proceeding in his Suit or Claim against him.

x Reg. cap. when al Ifrael(x) heard of the judgment which v. 27, 6 28 the King had judged, and they feared the King, for they faw that the wisdom of God was in him to do Judgement: that fo justly admired piece of Justice was as well and legal. ly done in his House, or Chamber, as if it had been done by him in the Sanbedrim, or any of his Courts of Justice

In the evidencing whereof, although the Argumen t

guments by me used, and the Authorities cited may to the more learned, and leffer part of the people feem to be too many, needlefs, or fuperfluous, ver they may to others appear to be as profitable as necellary to undeceive or any tidote all fuch who having a Magna Charta of their Fancies, do metamorphofe all they can our better Magna Charta, and make their difobedience conveniences or interest, the Standard and Rule of their obedience, and may be more and more miflead or infected by the Errors of the opinions delivered for Law in the Case before recited of the Prohibitions, and to wean them from those dangerous Antimonara chical Dodrines, which they had fuck'd in the late times of confusion, when our Lawes and right Reason attending them, and even Truth it felf were by an usurped power; false authority, and mechanick and ignorant part of the people, lead by a rebellious party, persecuted, banished, or affrighted.

Wherefore they who do delight to oppose, and cavil Regal Authority, by gleaning all the objections which they can either frame or hear of, and put the Law opon a Rack of Torture, to wring and wrest out of it any thing that may help to accommodate their distempered and unruly Fancyes, may think they are in the Road, and High way of Wildom, and Applause; but will in the end whilst they forget the duty of Subjects to their King, and the Commands of God, to honour and obey him, find themselves

to be more than a little deceived, and to be far enough out of it, and might do better to haften out of the finful ways they walked in, and the unfafety of the Paths they have trod and travelled in, and help to still and put to silence, rather than increase and foment those causeless complaints wherewith too many of our Nation surfecting upon happiness, do too much affright and afflict themselves and others, in their opposing the just priviledges and pro-

tection of the Kings Servants. growthere are

And remember that although there are few evils, or not to be justified matters of Fact, as well as those which have been good and vertuous, which have not left some Vestigia records or precedents to after Ages; and it hath not been unfitly faid, that Exempla illustrant non probant, that Examples may illustrate but not prove; yet the precedents and examples which are founded and built upon Law, Right, Reason, and Truth (as these by us alleaged on the part of the Kings Servants have been) are to be heeded and harkened unto, and the contrary rejected.

That the instances and examples brought by me out of the Givil and Cetareas Laws, ought to oblige as they do with many other Nations, propter equitaten, in regard of the Equity and reasonableness thereof, and more especially, when ex jure gentium of natural nations, by the Law of Nations and Nature they are in the particulars by me endeavoured here to be afferted.

not only by them but our Common Laws and reasonable Customs of England to be justified and maintained.

And that it is and should be the Interest of all the good people of England, to preserve the Honor of the King, and that the Bonds of gratitude in a return of what they have in their Liberties and Priviledges received of him, and his Royal Progenitors, should perswade them not to deny unto him those just Rights which by Law do belong unto Him and his Servants.

## CHAP, XXI.

That a care of the Honor and Reverence due unto the King; hath been accompted and is and ought to be the Interest of all the People of England, and that the Servants and retinue of a Soveraign Prince, who hath given and permitted to his Subjects so many large Liberties, Immunities, Exemptions and Priviledges, should not want those Exemptions, Immunities, Customs and Priviledges which are so justly claimed by them.

Custom of contradiction of Authority, and made himself a slave to wickedness and a Companion of those that speak evil of Dignities, may confess that it is and should be every mans Interest to observe the fifth Commandement of God, in that Sacred Ffff

and dreadfully pronounced Decalogue, to Honor and reverence the King and common Parent, and that St. Peter hath so conjoyned the Fear of God and Honer of the King, as that the one cannot be without the other, and it is obvious to every mans understanding, that where there is Honor there feldome wants obedience, and where there is an obedience, Honor most commonly doth bear it Company, so that if the Law of God, Natureand Nations, and she municipal Laws and Customs of all the Countreys, Kingdoms and Common-Wealths of the World, where Reason hath got any admittance, have submitted unto and acknowledged a Majefty, and more especial Honor to be due unto their Supreme and Soveraign. & f Majeftas quafi majer ftatue dicitur quis non fatebitur majerem ( x ) ftatum effe Regis in fue regne, and if Majefly is so called in regard of a greater State and Degree, who will not acknowledge that a King is

x Johannes Redin de Majestate principis 25. greater than any in his Kingdome? & certe funt

y Befoldus de jure Majefatio ca. I. 5.2:

me neque regia vi & dignitas elucefcere pofsit, there being certain properties or qualities requifite to a Superiority without which neither a Kingdome can be in any fafety, nor the Kingly Honour and Dignity can manifest or thew it felf.

faith Befoldus affectiones que superioritatem concomitanenr fine quibus neque regnum falvum & (y) incolu-

z Johannes Redin de Majestate principis. § 26.

And if Judges and Magistrates have a kind of participation thereof, imparted unto them by their Soveraign, majere ratione regum eos constituentium bifq, fascibus atque Majestate (2) decorantium Regia Majestas nuneupabitus with greater reason Kings

who-

who adorned them with those Ensigns of refemblances as it were of Regality and bestowed it upon them, are not to want or be without it, the Majefly of Kings being to much appointed and approved by God himfelf, as he made Corah, Dathan and Abiram and their Children and favorers, (a) the a Num 6, 16. dire examples of his wrath and punishment, but for murmuring against Moles and Agree and saying they took too much upon them, and fo imprinted a reverence and effeem of Kings in the hearts and minds of mankind as Foab, King Davids general of his Army having fought against Raab of the Children of Ammon, (b) would not when he was ready to b 2 Sam, 12 do it, until he had invited David to come and v. 27, & 28. have the Honor of taking it leaft that City should be afterwards called by the name of Foab that took it; And Nebucadrezzar King of Babilon during the Captivity of Febriakim King of Fudah, could attribute so much to the Rights of Majesty in Kings, as he Bake kindly unto him and let bis Throne above the Thrones of the Kings (C) who were with him in Ba- c Jer. 52. v. 31,32 bilon.

Wherein certainly the fad hearted people offfrael in Captivity with him did take it to be their Duty as well as their Interest, to rejoyce in that parcell of Hamanity and Honor which was done unto him. when as long before the Palatia or Curia Palaces of their Kings were so highly Honored by them, as the 122 Pfalm of the Kingly Prophet David, exhorted that people to Pray that Peace might be within the walls and Prosperity within her Palaces: The Glory and Honor of Solomon, was accompted to Ffff 3

e r Reg ca. 8. v. 66. be no loss than the Interest; Delight and Joy of the people of Israel when after his Feast, upon the Dedication of the Temple and his Sacrifice of (e) the Peace offerings, they Blessed the King and went up their Tents, joyinll and glad of heart for all the goodness that the Lo d had done for David his Servant; and for Israel his people.

The Romans so experimented the Honor of their Emperors living or dead, to be the great Interest of their people, as they that sled to their Statues, were protected (d) from their Pursuers, whether

it were in Civil matters or criminal.

f Salmutius Comment. in Pancirollum.

The Germans, their Successors in that Empire, took it ill in the Reign of the Charles the fifth Emperour, who was likewise King of Spaine, that the Spanish Grandees or other of that Nobility, did give so much Honor as they usually did to their Princes and Emperors (cases of Treason only excepted.)

And it was beleived to be fo much an Interest of our English true hearted Ancestors to be as carefull as they were Jealous of the Honor of their Kings.

As when Anselme Archbishop of Canterbury would in the Reign of King William Rufus, peer wishly hold on his resolution of disparaging of it in going to Rome to the Pope, for his Pall and confirmation; the great men and almost all the Nobility of the Kingdom and the other Bishops Assembled in Parliament at Rockingham Castle, concerning that obstinacy of Anselme; the Bishops and and many of the Nobility declared unto that Archbishop then present that the whole Kingdom did com-

g Fadmer.

Hist. lib. 1.
p. 26. 27, &28.

Et Selden m.
prafat. ad
oundem librum.

plain.

plain of him that he sought to take away the Honor of the King, his Crown and Dignity, and delivered their opinions that Quicunque Regia dignitatis consuctudines tellit, coronam simul & regnum tellit unum quippe sine also decenter baberi non posse, who soever took away any thing from the Kings Regality and Dignity, took away at the same time both his Crown and Kingdom, for the one could not Ho-

norably subfift without the other,

King Edward the 3d by the advice of the Lords 13 E. 3. and Commons in Parliament, in the 13th year of ca. 43. his Reign did Ordain, (h) that in case the Keepers of the Priviledges of the Hospitlers should increase upon the Kings Furisdictions, and offend the Kings Dignity, they should beware from thenceforth that they usurpe not any Furisdiction in prejudice of the King and his Crown, and if they did, their Superiors should be charged for their fact, as much as if they had been convict upon their proper Act.

In a Parliament holden in the two and fortieth year of the aforefaid Kings Reign, it was declared by the Lords and Commons therein Assembled, that they could not assent to any thing (i) which tended to i rot. Park the dishers son of the King and his Crown, to which they 42 E.3.

were fworm.

The Lords and Commons in Parliament in the 14th year of the Reign of King Richard the second, did pray the King that the prerogative of him and his Crown may be kept, and that all things (k) done or k Petit Parliatempted to the contrary, might be redressed, and that 14 R. 2. he might be as free as any of his Progenitors ever were, and in the 15th year of his Reign did in Parliament again.

again require, that he would as lawfully as any of his

Progenitors enjoy his Prerogative,

Trot. Parl. 17 R.2.m.11 O 12.

Richard Earl of Arundell in the 17 year of the Reign of the (1) aforesaid unfortunate Prince, did complain that John of Ganns Duke of Lancafter, who was then moulding the Sefign which his Son afterwards accomplished by usurpation of the Throne, did go Arm in Arm with the King, and that it befeemed not the Dukes men to wear the fame Color of Livery that the Kings did,

By an Act of Parliament made in the third year of the Reign of King Henry the 7th the Officersor Tenants of the King (m) were not to be retained by

Liveries with others.

n Articles against Cardinal Wolfey in Bakers Chronicle & Cokes 4th part of the Inftitutes.

m 7 H,7.

And divers of the great Nobility did in the Reign of King Hemythe Eight, make it one of their (n) Articles of high Treason, and great misdemeanors against Cardinal PVolley the great ingroffer of that Kings favor, and manager of his Authority, for that he being suspected to have the French Pox. had food and talked fo near the King, as to breath in his face,

The extent and verge of whose Royal house or Palace at pyhiteball, and the Liberties and Priviledges thereof, were so little defired to be leffened or diminished, as the Parliament did in the a8th year of his Reign, (a) Ordain that the Park of St. Fames, and the street leading from Charing-cross to the Santhuary gate at Westminster, and all the Houses, Buildings, Lands and Tenements, on both fides of the Same freet, or way from the faid Croffe unto Weftminfter-hall, scienate bying and being betwirt the water

@ 28H.S.

ca. II.

of the Thames on the East part, and the said Pakwall on the VVest part, and so forth thorough all the saile, precincts and limits of the Kings old Palace of Westminiter, should be annexed and added to the said Palace of Whitehall, and that the said Palace of Whitehall should have and enjoy within the limits and preeinsts aforesaid, all such and like Prevogatives, Priviledges, Liberties, Praheminencies and Furishistions, as to the Kings antient Palace within the Realm, have at any time heretofore belong do of right apportaineth, and that the said old Palace of Westminiter, shall be reputed and taken as part and parcel of the said Palace of Whitehall.

The Honor whereof and the rights and Priviledges of those that serve and attend him, whom every good Subject of England is bound to honor therein, might deterre and diswade those incivilities which are too often put upon them, and if the Law, Religion, right reason, the custom of Nations and rights of Majesty and Superiority did not forbid that golden Rule, mete-wand of Justice taught and given to Mankind by the Bleffed Redeemer of it, not to dethat unse others which which we would not have done unto us, might put that rude and uncivil as well as undutifull part of the Nation in remembrance, to do otherwise than p Blunts No.

When they that could be glad by the lavor and Carta Eindulgence of their Soveraigns, to get and obtain gis penes CaExemptions, free Customs, Priviledges, Franchifes and Immunities, some of which were very unfax Arungeusuall and extraordinary, (p) as that of King &-rams

thelftane

shelftane, granted to the men of Rippon in Torkfhire quod homines Ripponenfes fint credendi per funm ved & fuum nay in omnibus querelis & Curis licet tangen, frod & freed mortel, the men of Rippon were to be beleived by their Yea and Nay in all Actions and Courts, although it should concern breach of the Peace as far as a wound mortall, (being a Priviledge probably granted for some fignal Service or fidelity) or that Immunity which was granted by King Fohn to Robert de Ros of Hamlake, (q) that he and all his Demesn Lands (which were then a little Territory or very great ) (hould be free from any Service to the County or Hundred Court,

Q rot.pat. II.

Johannis.

And did so highly value and esteem them, and were fo carefull to preferve them, as betwixt the oth year of the Reign of King Henry the third, when the Bleffing of our magna Charta was procured, and the third year of the Reign of King Heary the 6th there were no less in several Kings Reigns, many in one and the same Kings Reign, and some with no more Intervals than one year succeeding

74 H.4.ca. I the other, then 37 Grants or Confirmations of our Kings unto them of those their Liberties and Franchifes by their Acts of Pariament, in which that of the 4th year of the Reign of King Henry 13 H.5 ca.1.

the 4th granted that all corporations and perfons Should enjoy their Liberties and Franchifes, and that of the third year of the Reign of King Henry the 5th that all Persons, Cities and Boroughs Should not be disturbed in their Liberties and Immunities, and from thence untill the Petition of Right, granted and affented unto by his late Mjesty King Charles the Martyr in the

the third year of his Reign, either in regard of the bloody Troubles and discords betwixt the Royal and Contending houses of Lancaster and York, change of the line of Lancaster into that of Tork, uniting of them both in King Henry the leventh, diffolution and confiscation of the Abbies, Monasteries and Religious houses, and alteration of Religion by King Henry the Eight, toffes and reverse of that in the Reign of Queen Mary, Troubles and Care of Queen Elizabeth in the restoring of the Protestant Religion, incertainty of her Successor, the comfort and content in the Peace, Plenty and Tranquility which her Subjects lived in under her Government; and the uniting of the Kingdoms of England and Scotland by King Fames her right Heir and Successor.

Or in respect of the abundance of Security which the people of England believed they had by those very many Grants and Confirmations by Acts of Parliament, and very many more by the Grants and Confirmations of our Kings without Acts of Parliament, with their prescriptions, Customs, and long uninterrupted usages, did not Trouble themselves or the Supreme Authority for a Corroboration of that which they had so long enjoy'd, and had reason to believe that there could be very little added unto it.

Would now think they should have a great deal of wrong if upon a Que Warrante brought against them to know by what Warrant they do Claim or use them, they might not be permitted to justifie or have them allowed; when some of their Ance-

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(596)

t 52 H. 3.

stors in the 52 year of the Reign of King Henry the third (t) being exempted from impanelling in Assistes, Juries and Enquests, stood so much upon it as they resused to be Sworn in great Assistes, Perambulations, Attaints, or as Witnesses to Deeds, Writings or Covenants, untill an Act of Parliament in that year was made by that King, which he willed to be held of all his Subjects as well high as low, that where their Oaths be sorequisite that without them fustice could not be Ministred, as in great Assistes, Attaints or Perambulations; or where they be named as Witnesses, they should be Sworn with a saving to them at another time their foresaid Liberties and Exemptions.

And should not be so ingratefull and unreasonable to deny that unto the King, which they would not be willing should be denied unto themselves, in those multitudes of Priviledges and Exemptions, which he and his Royal Progenitors and Predecesfors have so liberally granted or indulgently per-

mitted unto them.

Nor should the men of London envy or repine at those just Priviledges of the Kings Servants, under which many a Shopkeeper and Tradesman, who in their former prosperity, lustily barked against it, have been glad afterwards in their adversity a procured title of being the Kings Servant, to shelter themselves untill they could weather out their Troubles, and pacifie the too often uncompassionate assaults of their Creditors, and if they could not get into that Assum or place of more mercy, would make themselves the supposed manial Servants of

fome of the Members of Parliament, whose Priviledges are but built upon the Kings service in his, and the Weal Publicks, great concerns, and affairs,

And of that King who hath so lately restored and granted unto the Metropolis of London, (too many of wholeCitizens can be so undutifully fool shas to Imagine that they are yet fitting by the waters of Babylon, and cannot fing the Songs of sion, unless they may have aliberty to Arrest or Imprison his Servants, when, where and as often as they please without a Complaint first made, and licence obtained for it, ) and unto all the Cities, Burroughs, Corporations, Societies, Guilds and Fraternities, and all the people of England that were against him and his Royal Father in the late horrid Rebellion, all their Priviledges and Franchises which were thereby lost and forfeited and devolved again into the Crown, from whence they had their first Original and Being, and might by their every years Forfeitures fince of too many of them, by misusers or non-users, take the advantage thereof.

And those of the better fort which have received the Honor of Knighthood, and do enjoy the Dignity and respects thereof, and in their Title of Knight or Entit, according to the Saxon and High and Low Dutch Languages, (w) do bear the fignifi- "Spelman cation of a Servant or attendant in Military af-gloffar in fairs, and fo Uriah in the preface to the feven Pani- voce Thanus, tontial Psalmes in King Henry the 8ths Primer is "Saxon brecalled King Davids Knight and Servant and our tles of Honor Knights, were as Sir Henry Spelman (w) hathin- 2 part ca 5. formed us, antiently reckoned amongst the Famulos \$ 33.

Gggg 2

Thanes

Thanes & Ministres Regis amongst the Kings special and more remarkable Servants, and do or should enjoy the Priviledges, not to be Decembers or Tithing \*Kitchin 3 3. men (x) that they and their eldeft fons should be exempted from being cited to appear in the Court Leets or Hundreds, are as faith Camden called Equites aurati, because antiently it was lawfoll only for them to Guild and beautifie their Armor and Caparisons for their Horses with Gold, and by the Statute made in the 8th year of the Reign of King Henry the 5th (y) concerning only what things may be Guilded, and what laid on with Silver, Knights Spurs, and all the Apparel which pertaineth to a Baron, and above that Estate are allowed unto that noble Order, when all others under the Penal-

ty of so times the value are prohibited.

Were not faith the Lord Chancellor Egerton. by the course of the Court of Star-Chamber, (2) to be examined upon any Interrogatories which might disparage them; those that are to be chosen for every County, which should be the Worthiest and Wifest men to be in the House of Commons in Parliament are to be milites gladis cineti, Knights in Affiles of (a) novel diffeisin mort d'ancester attaint grand assife or in Writs of right, two of the discreetest Knights of the Shire, where the Juftices shall come shall be affociated unto them three are to be in Commissionsof over and Terminer, to hear and determine forcible Entries and Outrages done in their County, no man but a Knight was capable to be a Corener,

antiently an eminent Officer of the Crown and Realm of England, a plaint from a base and inferior Court,

z Hudsons Treatife of the Court of Star Chamber Ms. 188.

18 H. s.

4 13 E. I. CA. 30.

could

could not be removed but by the Testimony of four Knights:an Infant holding Lands by Knight Service made a Knight, was antiently as to his person out of wardship or pupillage, a Knight inhabitant or reforting to any City or Town Corporate, wherein is Conusance of criminal Pleas is not to be impannel'd in any Jury, for the Triall of any Capitall crime, when the Sheriff had received Tallies of the Kings Debtors, although he was an Officer of Trust, and whose Retorne or Answer was much credited, yet was not his Certificate into the Kings Exchequer of that Faith or Credit in the case aforesaid, (6) 6 New Staexcept the same were Fortified with one part of a tute of the Chirograph or Indenture Sealed, and the hands of or Statute of two Knights Testifying the same, no Constable or Ruithland Castelaine was to distraine a Knight for Castle- 10 E. I. guard, or to Execute that Service in his own Counter de Person, because he is Priviledged to do it by the Salops case, body of another, and the like in Service of War, Cokes Re in regard of the Dignity of Knighthood, in every ports & 7 E. Commission totake the acknowledgment of a Fine Vide a Writ to be levied of Lands, a Knight ought to be one of feat by the the Commissioners in grand Assife and Writs de King to the falso judicio four Knights are to be Impannelled, Justices of and not a less number in a Writ de perambulatione bothBenches facienda, and are so much valued and Intrusted a- called the bove others, as in Tryalls and Iffues at Law where Statute of bove others, as in Tryalls and Illues at Law where Carlile 15 any of the Nobility or any Bishop is a party, one E.2. Knight is to be of the Jury, and are fo more than many others Priviledged as their Armorand Horses, as hath been before remembred are not to be taken

in Execution, there being so great an Honor appropriate and fixed to the degree of Knighthood, as by the Law of Nations, where their Knights are not also without many and great Priviledges, an English Knight is not to be denyed that Honor, Place and Reverence in all Forrein Kingdoms and Places, where they shall have occasion to reside and Travell, and are by other Nations as well as ours so much effeemed as they are not whilst they are Knights, not to fuffer any ignominous punishment, (c) and therefore S. Giles Mompesson, and Sir Francis Michell Knights, in the later end of the Reign of

e Selden tit. bonor. ca. 5. 5 48.

d Selden tit.

honor 783,

CA. 5. \$37.

King Fames, were degraded before they under went

the Infamyinflicted upon them.

Laws, as Hakelinus filius Foscii Quatribusches was in the time of King Henry the 2d fined 100 l, then a great Sum of Money for striking a Knight, and Morfes de Cantebridgia 40 Marks, because he was present when the Knight was compelled to Swear that he would not complain of the Injury done unto him; (d) Sir Francis Tyas a Knight, in the Reign of King Edward the first recovered five pounds Damages in Wakefeild Court in Yorkshire a-C 784.833. against one German Mercer, for Arresting the Horse of one VVilliam Lepton that was his Esquire, and causing him to be unattended, the Court Roll mentioning it to be ad dedecus & dampnum pradicts Francisci quia suit sine Armigero to the disgrace and

damage of the said Sir Francis, because he wanted the Service of his Esquire, and a Ribauld or Clown

And so much were our Knights respected by our

that

that should without cause strike a Knight, was as Britton saith, (e) to be punished by the loss of his hand e Britton can that did it, & every man should owe so much to their de Appell de benefactors as not to deny the King those regards and respects which are due unto him, when the contempt or misusage of them cannot have any better effect than a dishonor of the King himself, or be without a Reseasion upon their Master, and a disparagement to his Regal Authority, which all the Histories and (f) repub. lib. 6. Monuments of former times, have loudly Proclaimed to be dangerous both to King and people, and do not seldome happen when Majesty is either con-

temned or neglected.

They who have no other to flye unto for help in in case of a denyall of their own Priviledges, and can by his Favor and Justice procure a Writ of fecta ad Curiam when a man refuleth to perform his Suit either to the County or Court Baron, (e) & F.N. B. or de feeta ad molendinum against one that 158. refuseth to Grind his Cornat the Lords Mill, quare obstruxis against one who having a liberty to pass through his Neighbours ground, cannot do it & Register of by the owners threatning to hinder it, (b) Writs 153. effendi quietum de thelonio, in the case of Citizens and Burgeffes of any City or Town, who i Fleta lib. have a Charter or prescription to exempt them 4 ca 26. from Toll through the whole Realm, (i) a Writ & Fitz, Herde fine Annullando to annull a Fine levied of Lands berts nat. in antient Demeln, to the prejudice of the Lord, Fre. 226. ( k ) and for those that are Summoned to the She- Register of riffs, turn out of their own Hundred (1) a Writ Writs 15. b. de libertate allocanda, m) for a Citizen or Burgeffe, to milid 174-

contrary thereunto, (m) and a Writ de Confuctudinibut dervitiis ( a aWrit of right close against a Te-

# 16id, 262. have his Priviledge allowed when he is impleaded

o F. N. B. gifter of

Writs 150.

Writs 147. Bracton lib. 2. CA. 26. S 8.

151. O' Re- nant which deforceth his Lord of the Services due unto him, and a Writ to exempt a man from the view of Frank pledge when he is not there refident, although all men are obliged thereunto by reason Register of of their Lands, not their habitation, (a) and as Braden faith, a view of Frank pledg is res quak Sasra quia folam perfonam Regis respicit & introducta fit pra Pace & militate Regis, as it were a Sacred matter or thing in regard it taketh care of the Kings person. and was introduced for his Peace and Profit, should by the rule of gratitude if there were nothing of right or duty to perswade it, not tell how to obfruct that so antient Claim of Priviledge of the Kings Servants, when it will ever be as Confonant to Law and right Reason for the Kings Servants not to be disturbed or prejudiced in their duties and attendance upon the King, as it is for any others.

a Statute of Gloncefter. 30 E. 1"

Of his people and Subjects being not his Servants, when by a Statute made at Gloucefter in the 30th year of the Reign of King Edward the first, (p) the King himself as that Act of Parliament mentioneth, providing for the Wealth of the Realm, and the more full Administration of Fustice, as to the Office of a King belongeth the difcreet men of the Realm, as well of high as low degree being called thither, it was provided and ordained, that when men were to claim or fremtheir Liberties within a time of 40 days prefixed, and were before the

the King (that is to fay in his Court of Kings-Bench, where himself is by Law supposed to sit ) they should not be in default before any Justices in the Circuits, for the King of his especial grace hatb granted, that he will save that party harmless, and if the Same party be impleaded upon such manner of Liberties before one or two of the aforesaid Justices, the same Fustices before whom the Party is impleaded. Shall fave him harmless before the other Fustices, and so shall the King also before him, when it shall appear by the Fustices, that lo is was in Plea before them, and if the afore aid Party be afore the King, fo that he cannot the lame day be before the laid fustices in their Circuits. the King shall lave that party harmless before the afore-Said Instices in their Circuits, for the day whereas he was before the King.

And not at all agreeable to reason that the Franchifes and Liberties granted by our Kings to the Counties Palatine of Chester, Lancaster, Durham, the Cinque ports, the City of Gloncester, with the Barton or little Territory so called, annexed unto it, the large extent of the Liberty of the Bishop of Ely, that of ten Hundreds to the Bishop of Winchefter in or near Somer fet shire, Seven Hundreds in or near Gloucestershire Claimed by Sir Robert Askins Knight of the Bath, the large extents and compass of the Liberties and Soke of Dencafter in the County of York, and of Sheffeild, Rotherham and Hallomshire in the same County, Grantham and its large Soke and Liberties, in the County of Lincoln, Tindall in Hexamshire in the County of Northumberland, and many an hundred more of Liberties and Hhhh Franchiles

Franchifes not here specified, exclusive to all others intermedling therein, should by the power of the Kings Grants or Allowance, and a just reverence and respect of their Neighbours and Tenants. have and enjoy a Priviledge and Civility, not to have their Servants Arrested or Imprisoned without complaint first made to their Lords or Masters, or leave asked, upon any of the Writs, Process, or Warrants of their own Liberties or Courts, before they suffer their Bailiffs or Officers to Arrest any of their Servants, or upon the Warrants or Process of any other the Kings Courts, untill a Writ of non omittas propter aliquam libertatem, claimed by them shall be after a not Execution of the first beawarded, either or both, of which may give a sufficient or large respite for the parties Profecuted to fatisfie, pacifie, or prolong the patience of an eager or furious Creditor, and that the King who gave and indulged those Liberties, should not be able to deferve or command a like Licence in the Case of any of his own Servants to be demanded of him, either upon a Process made out by the owner, or his Substitutes of the same Liberties. or any other Warrant or Process directed to the Owner or his Subordinates of that Liberty.

Or should not have as much Priviledge for his Blants No Servants (r) as the Miners in the Peak-hills in Dermo Lexicon byfhire, or those of the Stanneries in Devenfhire and & Cokerin- Cornwall, not to be Sued or Profecuted out of their stitution of Berghmote or Court of Stanneries, or disturbed in

their Works or business.

Or that his Servants should not as well deferve sheir

Courts.

their Priviledges to be continued unto them, as the Kings Tenants in antient Demesn, who upon the only reason and accompt that they were once the Kings Tenants, and did Plow and Sow his Lands, for the maintenance and Provision of his Houshold and Family, are not yet by the Tenure of those Lands of which there are very many Mannors and great quantities in England, (f) Ousted of those their / Trin. 9 H. Immunities or denyed them, but the very Tenants 6. rot. 20. at Will, who are as they say here to day and gone to morrow, do claim them and are not in any of the Kings Courts of Justice debarred of those exemptions, although those Mannors and Lands are very well known to have been long ago Granted away and Aliened by the King or his Royal Progenitors, & fince passed from one Owner to another for many Generations, the effect by an Indulgence, Permission or Custom contrary to the general and every where approved Rule or Maxime, that ceffante canfa tollitur effcotus the cause or reason of the thing ceasing, the effect should cease continuing after the Cause ceafed, in so much as many do now enjoythose Priviledges, who are no Tenants of the King, neither have any thing to do with his most Honourable Houshold, or have any Relation thereunto.

For if all the depths of Reason and Humane Underflanding were Sounded, Searched and dived into by the Sons of men, all the Ingenuity of Mankind will never be able to find or affigura Cause or Reason why the House of Commons in Parliament have heretofore Petitioned our Kings for a Freedom from Arrests or Imprisonment, or to Punish any the Offenders H h h h 2 therein t Elfings modus tenendi Parlemen tum. 144, 145, 146 & Mr. Pryns Animadverfions upon Cokes 4th part of the Institutes

therein, (t) if they had any doubt of his want of a legal Power and Authority therein to grant it or why the bufinessor Service of the King concerning himfelf or the Weal Publick, should so operate or deserve to be a Cause to Priviledge themselves, their Estates, or Manial Servants from Arrest or disturbance, and fuch a Priviledge in Parliament in the time of an Adjournment, which hath sometimes continued for several Months, should be allowed and thought reasonable when their business which was the cause of it, was all that time in suspence or abayance, and that the King who granted and allowed those Priviledges, should not enjoy the like for his own Servants, who are dayly busied in the Safety, Honour and attendance of his Person, and the great Affairs of the Kingdom, and that such a Cause should produce that effect for them and their Servants, and the King who defireth but the like effect or production from one and the same Cause, should not enjoy it for his own Servants, and that eadem ratio should not in the Kings Case as well as in the Case of any of his Subjects, produce and be a Cause of the like Law or Liberty, who doth not claim the Hearing of those causes where the Plaintiffs are not his Servants, as the King of France, who by his Commissions of Commitimus, Impowers a Court, to hear and determine Causes and concernments of his Servants, but only that they should ask leave before they proceed against them in any of his Courts of Justice which the Plaintiffs shall make choice of.

Shall the Generall or Commander of the Armies

mies or Guards, Forts or Garrisons of the King, and the Admirall of a Navy or Ships, have a power not to permit any of their Officers or Souldiers to be Arrested or Imprisoned, without Licence sinst obtained, and shall the Servants of the King in the attendance upon his Sacred Person in the Watch and Care of them and the Publick Welfare, as well in the time of War and Peace, which not seldome disapoints the horrid effects of a peopletormenting War not have a like Priviledge.

Are the superiour Courts of Justice not blamed when the Judges thereof by the Kings Authority, (#) # Mich. 38 can supersede Actions in Inferiour Courts many H. 6. 12. 6 times, but upon the pretence of Actions depending in Pass 38H.6. their Superiour Courts, as to rever fe an Utlary or the like in eundo Gredeundo, (w) when it is not every day, " Trin. 25 or all days, or but some hours business, or can the Ju- Rege Oxon stices of the Court of Common Pleas, Priviledge 22.9, H 6. the Serjeants at Law, and forbid that they should II E. 4 6 E. be Sued in any other Court, when they do plead 6. Dier 71. at other Courts as well as in the Court of Common Pleas, and are so numerous as if one by an Arrest or Impriment, should not be able to move or plead his Clients business; the Client having all the Writings in his own or his Attorneys custody, may have and retain another Serjeant at Law, who can as well understand his business to look unto it, and not only protect them, but the Clerks & Mich. 3. of the Serjeants at Law; (x) and in the Vacation, Car. prim. and at their Chambers (far distant from Westminster Croke 1. part Hall) when the business of the Law, and Courts 84, 085.

V In veter. & novo libr. intration. tit. Privileg. Priviledg.

40.

that the Juftices of that and other the Superiour Courts can by the Kings and not their own immediate Authority, Priviledge, (y) Prothonotaries, and all other Officers and Clerks of their several Courts. and their Clerks, when they have or may have o-& Brook tit, ther Clerks to do their bufiness.

And the Warden of the Fleet, Cryers and Tipstaves, in times of Vacation, and as there shall be occasion, Unattach Goods, and discharge Bonds and Sureties given for Appearance, when there cannot be any just cause or necessity untill the Term ensuing for their attendance and Priviledges, and keep from Arrest by the Inferiour Courts their Attorneys, who are no Members of their Superiour Courts, and even the Attorneys Clarks, And not only allow that Priviledge to the immediate Officers of their Courts, but extend it unto their Clarks that are subservient unto them. and not deny it, as hath been before remembred unto a Filacers horskeeper.

Their Writs of Priviledge in the Kings name, declaring and publishing that such breaches of Priviledge are in noftri contemptum & curia noftra, in Contempt of the King and his Court, that such Priviledged person eunde & redeunde in going and coming to his Courts of Justice, is and ought to be (ub protectione noftra under the Kings protection, & tam ex Regia dignitate quam ex antiqua consuetudine

vet, lib, intration, tit. Priviledge.

Custom is to be Priviledged. Did Justice Vernon one of the Justices of the Court of Common Pleas in the time of Vacation,

as well in regard of his Dignity, as by antient

when

when a man indebted, having to an Action given special Bail before him, at his Chamber in Serjeants-Inne in Chancery-lane, and coming out of the Gate, was Way-laid and Arrested by some Serjeants at Mace, or Catchpoles of London, and Arrested upon some other mans Action, lay down, made an Out-cry, and refused to be their Prisoner. of which the Judge being informed, commanded the Catchpoles and Prisoner to be brought to his Chamber, where they being something Surly, and refusing to deliver him, he threw of his Gown, and taking one of them by the shoulder, (whereof I was an eye Witness) did so shake him, and threaten to commit him and his fellow Catchpoles. as he enforced them to release the Prisoner, and suffer him to escape; And shall not the King who is the Constituent Principle, and primum incipiens; the only cause, support and maintenance, as well as giver of all Immunities, Exemptions, Franchifes and Priviledges of the Kingdom: Not be able to do as much as those unto whom he hath granted and permitted it, and protect and Priviledge his Domeflick Servants or men imployed by him, but like an old Ifaac over liberal to a Craving Facob: have nothing in referve of Priviledges or Favors for his Servants, who have attended our David when he was in all his Troubles, and deserved better than many a participation of his Bleffings, or shall his Subjects like the Sullen and Selfish Nabel, have so little regard of him or his Servants that do help to guard their flocks, as to receive his Benefits, and make notwithstanding their grumbling Ingratitude

Ingratitude and refractory Humours, the only Re-

torn or acknowledgment of them.

Hath he and his Royal Progenitors and Predecessors, as the Grecian Monarchs and Common-Wealths antiently used to do (from whence the Romans after they had shut their Temple of Fanus, (z) and made their Military Glories impart some of their Honour to the more Civil Imployments, and gown also learned it) taken such a care to protect, Honour, and Priviledge his Ministers of Justice and their subordinate Officers in the Courts thereof, whilst they officiate in his Service therein

Did the Wildom of our King and Parliament

z Kippingus de antiquitatibus Roman lib. 2. ca. 4,

a 32 H. 8.

in the 32d year of the Reign of King Henry the 8th (a) think it no inconvenience, but a benefit to the people, that the greater and more necessary conceras, should give may to the lesser, when they Ordained (which hath been ever fince duly observed) that the Phisitians in London should have a Priviledge not to keep watch or Ward, nor to be chofen or bear the Office of Constable, or to bear any Office in the City of London or Subarbs, and any such Ele-Ction to be void, in all which the Weal Publick was not a little concerned: (b) And the Barber Chirurgions are likewise by an Act of Parliament made in the same Parliament, exempt from bearing of Armour, or to be put in any Watches or Erquefts, which the Weal Publick, without that Priviledge could not otherwise have dispensed with.

632 H. 8. 64. 42.

> Could Cromwell, that accomplishment of wickedness and Hypocrisie, and Mr. Shepheard whom

he

he had hired (c) to clip and missile our Laws up- c Shepheards on a pretence of reformation of them, allow in Office of a their modell thereof, that the Servants of his missile of Called Protectorship should not be compelled to stable, ecc. ferve upon Furies at Assiles or Sessions, or to bear the Office of a Constable or Church Warden; And shall the Kings Servants that are continually imployed in the Attendance, Preservation, Sasety and well being of his Person and people, being matters of the greatest concernment; be excluded, or thought not worthy of the like.

Could the Archbishoprick and many of the Successive Archbishops of Tork, enjoy a liberty of Fridfoll & Frishstow Frid in the Saxon, signifying Peace, and stol sedes Cathedra and Stow locus (d) Cathedra qui-d Blounts etudinis & pacis, a Seat, Chair, or place of Peace, Nomo Lexiwhich had this Inscription, Has sedes lapidea Freedstoll dicitur pacis Cathedra ad quam reus sugiendo perveniens omnimodam habet securitatem, this Seat or Chair of Stone, is called Freedstoll or the Chair of Peace, to which any Offender slying is to have all manner of Resuge and Security, an Immunity granted unto the Church of St. Peters in Tork, and confirmed by King Henry the 7th in the sisth year of his Reign.

And there is in Glossopdale in the County of Darby a place upon a Hill or large Heath, some distance from the Town, yet known by the name of the Abbots Chair, which probably might have been endowed with the like Immuni-

Or shall a Priest or person propter Privilegium
Liii Clericale

Clericale in regard of his being in holy Orders, not be diffreined when he hath no lay Fee, or upon an Attachment, refuseth to find Pledges, because he hath no lay Fee, or hath one in the Prebend, and the Ordinary, nor the Sheriff, although he hath a Warrant; to enter the Liberty without the ordinary or Bishop, and the Bishop himself cannot do it fine speciali pracepto Regis cum Canonicus adeo libere teneat prebendam (uam de Ecclesia sicut ipse Episcopus Baroniam & canonici funt, quali unum corpus per fe in Ecclefia without a foecial Precept or Warrant from the King, for that a Canon or Prebend doth as freely hold his prebendary of the Church as the Bishop doth his Barony, and the Canons are, and do make a Body or Corporation by themselves in the Church.

Doth the King grant and allow Cognifance of Pleas or Causes to so many of his Subjects within their Franchises and Liberties, with Fosis and furcis, power to punish or hang in Crim nal matters, and shall he not have so much Cognisance of the matters and concernments of his houshold and manial Servants, as to have leave asked before they be Arrested or disturbed in his Service which is the only cause of the Priviledge which he grants and allows to his Courts of Justice, and the Officers

Cant. and Servants thereof.

E. 3. coram
Rege Cant.
rot 39.
f Hillar, 38
E. 3. coram.
Rege rot, 22.
Wilts in
Dorf.

# Hil'ar. 47

Or can any man think it reasonable that the Bishop of Eig (e) should have Cognisance of Pleas arising in his Bishoprick, and the Territories thereof, or the Magistrates of the City of salisbury (f) to have the like, and superfede Actions and Pleas depending

depending in the Court of Kings-Bench, or the Lord Maior of London, have and enjoy the priviledge of not having any Attachment awarded against him out of the high Court of Chancery; as in the case of Sr. Fohn Rotin on Knight, whilft he was Lord Mayor of London, and exercised that Annual office as the Kings Lieutenant or special Servantsor that Mr. Fohn Abdy an Alderman of London in Anno Dom. 164 obeing the 16th year of the Reignof King Charles the Marry, should by the Judges of the Court of Kings-Bench be allowed a Priviledg not to bear the Office of a Constable in Effex(g) where he was many (g) Crokes times residentat his Country house within the Leet Reports 16. or mannor of Sir william Hicks Knight, where by the Car. Custome of that place every inhabitant or resiant was 585. Alderfrom honse to house yearly by turnes to execute that of man abdyes fice, and upon a writ granted him directed to the Lord of the Mannor or his Steward, to discharge him because he being an Alderman of London, ought to be there resident the greatest part of the year, and if absent may be fined, all the Justices of that Court delivered their opinion that he ought to be discharged by his priviledge, as Attorneys attending in Courts of Justice, are of such offices of Constables and other offices in the parish. although it was faid that the Alderman might execute the office of Constable by deputy, and his personal Attendance was not requisite by the Cuftome of the Mannor, yet that exception was not allowed.

Or that Mr. Bacon A Barrester at Law of Grayes-Fun, should in Trinity Term in Anno 1655. (b) by Iiii 2

(h) Banco Regisinter Bacon & Ramsey in Termino Trin. 1665 460.

aforefaid Court upon view of the prefidents in Francklin; and Sir William Butlers Case and Bere and Fones his Case of the Midle-Temple, have a priviledge allowed unto him, in respect of his Barrestership and necessary attendance upon the Courts of Justice in Westminster-Hall, to lay a transitory, Action at Law in Middlesex, when it was before laid in Northumberland, and that it should not be reasonable for the King to allow his servants their aforesaid priviledges; much more necessary and

conducing to the weal publique.

May not the King as well Claim and enjoy a priviledge for his servants and their freedom, from arrest without first obtaining his licence, or within his virge of twelve miles compass or circumference of his Court ( which certainly was at the first intended by Law for more purposes then for the Jurisdiction of the Marshals or Marshalsea Court; and may probably be believed to have been antiently used for an Asylum, or place of peace or freedom from fuch kind of violences as arresting the Kings houshold servants without the Kings licence)

As the Universitie of Oxford doth by the grants of our Kings and their several acts of parliament in its large boundaries or precincts; and the University of Cambridge, the like within their Colledges, Halls and Precincts, for the better observation whereof in Oxford, every Sheriff of the County of oxford at his admission into his office, is to take an oath (i) that the Masters of the said Universites and their servants from Injuries and violences; he hall keep and defend by all bis Strength and power; and 160

(i) Vide Book of Oathes 227 Printed in -9 nno 1649.

the peace in the faid University as much as in him is. And give Conncell and help to the Chancellor and Schollars of the same University, to punish the disturbers and breakers of the peace there, after the priviledges and Statutes of the University at all times when it shall be needful; and put his help with all his Strength to defend the priviledges liberties and Customs of the Said University; and give the like oathunto his Under-(beriffes and other his ministers when be shall come to the Town and Castle of Oxford, in the presence of any who shall be deputed by the faid University; unto the which things the King will that his faid Ministers shall be arcted and compelled: The like Oath being to be taken by the Sheriffs of Cambridge and Huntington for the conversation of the rights and priviledges of the University of Cambridge.

Do the Inns of Court or houses of law, which for some Ages or Centuries past were appropriate and fet apart for the Study of the Common lawes of England, and other necessary parts of learning and endowments, proper and fit to bear the fons of our Nobility and Gentry company, (k) within their houses and precincts claim and enjoy as they Befoldus de ought to do according to the law of Nations, and Ture Acadethe priviledges of all the Universitles and places of miarum. Study in the Christian world. A just and legal priviledge of a freedom from any Arrest or disturbance, by the officers of any Subordinate Magistrate in matters not Capital or more then ordinary criminal; And the Inner and Middle-Temples, and Lincolns-fin being besides entituled to the like Exemption & priviledge by a particular Immunity and

Exemption:

1 rot. pat. 49. Exemption, (1) granted anciently by some of & 53 H.3. our Kings of England, long before they were 22 E. I. Societies of law to the Owners and Proprietors War. & Mid. of the Mannor of the New Temple then fo called in quo Warr ( the old one being before scituate in or near Holan . & Affil. born, and as well as the new one sometimes part rot. 16. in of the possessions of the Knights Templers ) now dorf, inter placita Corocontaining the Inner and most part of the Middlena Affil. & Temple, and likewise the outer Temple without QNO WATTANT 7 emple-Bar, extending it felf as far as to part of Ef-14 E. 2. fex house garden, and into New-street, now called rot. QI.tres Chancery- Lane , and Ficket or Fickelfcroft now Lin-Pasch. & colns-Inn fields upon part whereof Lincolns-Inn was ros. clauf. ejusdem An- built. mi m. 3.

To be held sub eadem forma in the same manner as the honor or Earldom of Leicester and the Lands thereunto belonging, were antiently holden with an Exemption or priviledge: that no fustices, Efcheaters, Bayliffs, or other Ministers or Officers of the King should enter or intermedale therein; of which the Successors and Owners and those as honourable, as useful Collegiate nurseries of law and learning; although they do not as our Universities and those which are in the parts beyond the Seas, claim a conusance in causes and controversies at law, wherein their Schollars, Students and officers are concerned, have been so careful to preserve those their Antient and necessary priviledges, as they have upon any the least violation or attempt; to bereave them thereof, fallied out like fo many young Lions, and appeared to be the fout Propugnators and defenders thereof, rescued such as have been

been Arrested within their Liberties, whether any or none of the Society beaten, and pumped the Catchpoles, Serjeants at Mace, or Bailiffs, ignominiously shaved their heads and beards, Anointed them with the coftly Oyl or Syrrup of their houses of Offices or Jakes, and at the Temple for a farewell, thrown them into the Thames.

Do all men that have Liberties and Priviledges appertaining to their Estates or Persons, or any Offices or Places which they hold? Summon the best of their Cares and Industry to maintain them, and shall it be a crime or disgrace to the Kings Servants, either to be entituled unto, or endeavor

to Affert them.

Shall it be deemed just Legal and Rational that the City of London should be so carefull of their Customs and Liberties, granted, not only by King Henry the first, but confirmed by divers Kings and Queens of England, and many of their Acts of Parliament, as no longer ago (m) than in the year m Vide The of our Lord 1669, to Claim in their Act or com- Act of Common Councel, that no Citizen is to be compelled and the Oath to plead without the Walls of their City, and their of a Freeman Freemen are bound by Oath as well as by many of London, Acts of Common Councel of that City, not to Sue one another out of the City where they may have remedie in their own Courts, and to maintain the Franchises and Liberties thereof, and that the Warrant of levesur quarela for the removing of any Action or Plaint, depending in any of the Sheriffs Courts of that City, into the Mayors Court, brought by a: Serjeant

Serjeant at Mace and Ministers of the Mayors Court, shall not be refused, or shall it betaken or beleeved to be inconvenient for that City or their Freemen to be drawn or enforced to Plead, or be Prosecuted out of their own Courts.

And shall it not be as reasonable for the King in the case of his own Houshold and Domestick Servants, to protect them from being disturbed in his Service by any Arrests, without his Li-

cence.

Doth every Sheriff of England and Wales at his admission into his Office, swear that as far as he can or may, he shall truly keep the Kings Rights, and all that belongeth unto the Crown, and shall not affent to decrease, lesen, diminish or conseal any of the Kings Rights or his Franchifes, and when soever he shall have knowledge that the Kings Rights, or the Rights of his Crown be withdrawn, beit in Land Rent, Franchifes or Suits, or any other thing, he shall do his power to make them to be restored to the King again, and if he may not do it, shall certifie the King or some of his Councel thereof, and can any Sheriff of England and Wales, without the acknowledgment of a gross ignorance, with any safety of their Oaths or Consciences, knowingly Arrest or cause to be Arrested any of the Kings Servants, against the Will of his or their Sovereign.

Doth a Custom or civility so far prevail with the Sheriffs of London and their Clarks, as when any Action is entred against any Alderman of the City, or the Sword-bearer or other Officer of the Lord Mayor, they will not Arrest an Alderman,

man, or take away the Lord Mayors Sword-Bearer from before him, untill they have given them a civil and private notice thereof; whereby to prevent the difgrace, or give them time to provide against it, or procure a Truce or quiet. And shall the Servants of their Masters Master (if they were not more justly than they entituled to their Antient and Legal Priviledges) not be so much respected, which his late Majesty thought to be as undecent as Inconvenient, when upon some disrespects shewed by some of that City in their endeavors to inforce upon some of his Servants the Office of Constable or Church-warden, he demanding of the Lord Mayor of London, whom he had caused to Attend him upon that Complaint and Occasion; what was the Reason the Lord Mayors Officers were not to be put upon fuch Offices? and was answered with a Reason given, because they were to attend him: Replied; do not you think that to be a Reason as much or more in my case as your own ?

Must Westminster, the Abby or Church whereof was first founded by King Lucius a Brittish King, upon a piece of Land fo incult, as it was called Thorney or the Island of Thornes, (n) then accompted n Dugdales to be two miles distant from London (measured it Monasticon. may be unto Ludgate) and after the better building 1. Tome 55. and enlarging thereof by King Edward the Confestor honoured, as it hath been ever since Regum nostrorum Sepulsura & Regalium repositorium, with the usual and defigned place of the Buriall of our Kings, and the Custody and keeping of the Royal Vestments and Ornaments used at their Coro-

Kkkk

nations:

nations: an Honourable Office and Trust now Claimed and enjoyed by the Dean of that Collegiate Church, confess and acknowledge that by the happy Neighbourhood of our Kings Royal Palace near adjoyning, together with their High Court of Chancery, Courts of Justiceand Exchequer, the receipt of their once great and largely extended revenue attending therein, help and succour of the Royal Houshold and Hospitality, and those Crums of Comfort Meat and Drink, and Provisions not used fragments, broken meat, offall, and wast of the Wine and Food, which dayly came from the many plentifully furnish'd Tables, and expence of Victuals of the Kings house Servants and retinue: Fed and Nourrished many of her Families, by which and many Priviledges granted unto her by our Kings. is now from a shrub, come to be as one of the Cedars of our Lebanon, and augmented and encreased from a few scattered Cottages, Sheds, Booths. and Tents about the Abby, and the Kings house and Palace to a Village, from a Village to a Town, and from a Town to a City with a Pomerium Fauzburgs or Suburbs so large, as it stretcheth it self from Tutlefields in a continued Building and Streets to Temple-Barre and the Inns of Court, and in many other places is so contiguously joyned to London, as it makes her self to be as it were her younger fifter; And must she not blush at the same time that any of her Inhabitants should Exercife or be guilty of fo foul an Ingratitude, as to Arrest without Licence any of the Servants of the King, whose Royal Progenitors and Predecessors have have nursed and brought her to that perfecti-

And hath London like the Members of the body natural, found herfelf as to her retayling Trade to be the better when it was nearer to the head and heart, and did therefore so follow the warmth and hopes of Gain and increase of Trade and Imployment thereby, as the hath swelled her Suburbs big. ger than her felt; As although her Forreign Trade is brought unto her from the Sea and Eastward; yet the hath immently built her felf ( as the ingenious Mr. Grant one of her Citizens hath of late observed) Westwards, to be as near as she could unto her Kings Palace, and his Courts of Justice, which not only daily receiveth the feet of many of the people of the Nation, but of Strangers coming as far as ever the Sheban Queen did to Solomon.

Can any of her Citizens be so stupid or ingratefully ignorant, as not to understand that that great City and the Commerce and Gain thereof which is now so highly valued by them, is and hath been by the Neighbour residence of our Kings and Princes and their Courts of Justice, so greatly as it appears to be enlarged and multiplied in their Inhabitants, Riches, variety and Excellency of her Artificers, Magnificence, State and Beauty of her Churches and Buildings; And hath so much extended her Trade and Merchandise both by Land and Sea through all the Circuite and Travails of the Sun, and to the utmost parts of the Earth, as her multitude of Ships at Sea, and a floating Kkkk 2 Forrest

Forrest (as it were) of them daily or weekly going out and returning home upon the River of Thames, hath made her one of the greatest Emporiums in the World, and Glorious in the midst of many Waters, in so much as she hath by her strength and Honour at Sea and her Might and Interest at Land, Hang'd the Shield and Helmet in her; set forth her Comelines, and made her self not only the Mistress of the Trade of our Isles at home, but of our many

growing rich Plantations in America.

And can that City of London, the magazine of Mechanick Arts and multitudes of People as it is at this day, and taketh her felf to be not a little honoured by being called the Emperial Chamber of our Kings of England: Have so little acquaintance with the Dictates of reason and gracitude or a care of their own Interest, as to forget the Founders and Cause of that their Plenty and Happiness. and upon every little occasion of a Debt or money owing them, to Worry, take by the Throte, Arrest and Imprison any of the Kings Servants with the Pay me what thou owest me when more than half of it (and much of it unjustly) was gained of the Debtor, and at the same time refuse to pay unto the King, the Master of that Servant the debt of Graticude, Duty, Honour, Reverence, good Manners and Civility which they owed unto him. either of which would have shewed them the way to complain unto him of such and indebted or ill dealing Servant, and Petition for his leave or Lisence to Arrest or out-law him before they do it.

When

When they that do so much and unducifully undervalue his Courts, Servants and Royal refidence and Neighbourhood, may be affured by the Annalls and Histories of England, that their Predecessors in the Reign of King Richard the 2d when their Forreign and home Trade was not the Tenth of what it is now, as the small Revenue of the Customs in the latter end of the Reign of Queen Elizabeth will manifest, when the highest improvement of her Care and Carmardens discovery, could bring her Customs and Profits by Merchandife but to 50000 l. per annum, were so sensible of that Kings removal of his Court from London, displeasure and Indignation, heightned by a Riot committed upon the Servants and house of the Bishop of Salisbury Lord Treasurer, for that one of the Bishops Servants had taken a horse loafe. out of aBakers Basket as he passed along the Streets, ()) for which notwithflanding the Mayor and Alder- o Sit Rimen had appealed the Tumult, the Liberties of chard Rathe City were feiled into the Kings hands, the kers Chroni-Mayor Committed to the Castle of Windsor, and cle, 159. the Aldermen and some other substantial Citizens, to other Castles, a Warden appointed to Governe the City, as they deemed themselves in a lost and ruining Condition, untill by the special Suit of the Duke of Gloscefter, they had procured the King upon the Payment of Ten thousand pounds, and many rich gifts presented to him and the Queen to return to Landon, where with great joy they received him with four hundred men on Horfback clad all in one Livery.

And

And by a sad experience if they have a mind to taste it, and the King should not continue and make it to be as his Chamber, Court or Palace, but remove his Courts, his Servants, and Courts of Justice, as King Edward the first did to rork for Seven years together, during his Wars with Scotland; would too late repent the misusage of the Founders and cause of their happiness, and acknowledge the Night and Shades to be long and cold, when their Sunshould remove his Walk or Tropick to enlighten and restesh another part of the World.

And would find themselves to be mistaken in their Accompt as well as Opinion, if they should fancy that nothing can hurt their Trade, unless the River of Thames should be carried away from them, and may in time be so well Acquainted with the Error of those conceipts, as to confess that they were built upon a very Tottering and failing Condition, when they shall, like men either of any retrospect to the Ages or Times past, or prospect of what is coming or may surely happen, but consider that in all the Reigns of our British, Saxon or Danish Kings, or of those of the Norman Race untill the Reign of King Edward the third, the Neighbourhood of their Thames brought them so little advantage, as it was rather an Embrio than an Emperium or noted Town of Trade, that from thence to the Erecting and Incouragement of the Staple, Towns and Cities of Trade, whereof Westminster was one: By King Edward the third for the Advance of our Clothing and Wollen Manufacture,

nufacture, which in a short time after by the Wars of France or some other intervenient obstruction, dwindled into a defuetude, and London and her Blackwell-hall made to be the Miftress of that once flowrishing Trade, the quieting of Wales and the Commerce with it, after the Reign of King Henry the 4th, the uniting of the Houses of York and Lancaster, by King Henry the 7th, the opening of the Passages to the East and west Indies Grants of many Fairs and Markets, which have been fince made, the Trade of London, which was not before much more than in its Bloom and Blossom, is by the Power, Alliance, Leagues and Interest of our Kings and Forreign Princes, and the many Immunities and Priviledges procured by them for our Merchants, with France, Spain, Portugal, Burgundie, and the Netherlands, the Russia, or Moscovie Haule or Hamburgh, East and West-India Trade, with those of the English Colonies; as Virginia, Bermudus, Barbados, St. Christophers, New-England, Maryland, Mevis and Siranam, fince arrived to that height or perfe-Con, which hath like Tirus ; Enlarged Her Borders, and made her the Merchant of many Isles, and to be as the Ocean, into which althe Rivers of the Land do run, and hasten to pay their Tribute; And in the greatest of her Pride and Glory, should not be to learn that the Scheld could not after that the Heiresse of Burgundie had transferred her Court and residence into Spain. That great and Famous Town of Trade was made a place of defolation and a wonder of what the was, and that the residence and Court of the French Kings, hath:

hath made Paris, though an Inland City, far didistant from the Sea, and washed only by the River Seyne, not much acquainted with Ships or Navigation, to be called domicilium Regis & caput regni, the Head and Chief of all the Towns and Cities of France, le Roy ayant fon domicile & ou les Princes & Pairs de France & autres officiers de la Couronne doivent eftre a la sutte du Roy (p) the King

P Leves reemild' An having there his House or Palace, and the Princes cuns notables and Peers of France and other Officers of the arrests en le Crown, who ought to attend the Court of the Parlement de King.

Paris ca. 17.

Do the Merchants of London who Trade into Spain, Russia, and many other parts of the World, by the Care, Power, and Protection of our Kings and Princes, and their chargeable Embasfies to Forreign Princes and States, enjoy a q Vid. Privi- Priviledge and Freedom (9) from Arrests of their ledges Gran- Persons or Estates, without a Complaint first made to their Confuls, or Remedie endeavoured to be obtained by Application unto them, and to have their Causes and Actions tryed before a Judge, Conservator of their own Privi-

> Do our Kings allow and cause those Consuls to Solicite and take a care to maintain and defend those Priviledges, and Authorize their Embassadors, reliding in the Courts of any Kings, Princes or Republicks to make it to be a part of their

bufiness to be affistant unto them.

Have the Magistrates of the City of London, for more than 500 years together at their coming

Spain in An-No 1645. ledges.

ted by Phi-

lip the 4th

King of

to the Cathedral Church of St. Paul, at some of their greatest Festivals and Solemnities in every year until our late times of Confusion, in a gratefull remembrance of his Favours, walk round about and vifit the Grave-Stone or Burial place of William Bishop of London, who procured some Liberties to be Granted by William the Conqueror, to their City, being not the half of those of a greater Consequence and Profit, which have been fince Granted unto them by King Henry the first, King Richard the first, King Fobn, King Henry the third, King Edward the third, King Richard the second, King Edward the 6th, and divers others of our Kings and Princes, who gave unto them many more and greater Favours and Priviledges, as the Shrevalty of Middlesex, Liberty to choose every year their Mayor, free Warren, in a great Circuit about the City, that every Sheriff should have two Clarks and two Serjeants, and the City have a Common Seal, that the Mayor should be Escheator and Justice of Gaol Delivery at Newgate; that the Serjeants of the Mayor and Sheriffs should bear Maces of Silver and Guilt, with the Kings Arms Engraven upon them, the Aldermen should continue during their lives, and not be removed without special Cause, with the grant of the Borough of Southwark, and Confervation of the River of Thames, cum multu alis, &c. and many more, some of which were before recited.

Will not all those Benefits, their Being, their Lill Happiness,

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Happiness, and the continuance of those bleffings with their Trades at home and abroad, be enough to put them in mind to shew a kindness, respects and Civility due unto the Kings Servants, and not to drown those many Favours, Honours and Priviledges received from him and his Royal Progenitors and Predecessors in the dead Sea, of a base and unworthy Ingratitude, or imitate Fefurum, who like an Heyser waxing sat, kickt against the cause of it?

Or can they upon any Foundation or ground of Reason or probability, think that if our Kings should not continue and make London to be as his Chamber, Court or Palace, but remove himself, his Court and Servants to Fork, Hull, Oxford or Briffoll, the Inhabitants thereof would not gladly pay him a greater Tribute of Duty and Thankfulnes than the not Arresting his Servanrs without licence first obtained, and would be no loosers but greater Gainers by it.

Do the Might and greatness of Princes, and their power to give aids and Assistance, where Alliance, Interest or Leagues do require it, or to retalliate Wrongs or Injuries done and received, perswade a Priviledge and Civility to the Persons and Goods of the Embassadors and their Servants, and retinue of one another, although not bound thereunto by any Laws or Rules of Subjection or Allegiance.

And shall not a just fear, Duty and Reverence

of Subjects to their Kings and Princes, Civility, good Manners, Gratitude, Oaths of Allegiance and Supremacy, Fear and Command of God, and a dayly protection by the Kings Power, Laws and Justice of themselves and their Estates, Honour, Reputation, and all that can be of value unto them from Forreign and Domestick dangers, wrongs or oppressions, invite them to a forbearance of that Barbarous and undutifull way of Arresting any of his Servants without a complaint first made or licence procured to do it?

Or how can such a one or any of his Children, without shame or consustion of Face, beg, or hope for Mercy or Pardon from the King for man-flaughter, or some other offence, mischance or forfeiture, when but a week or a little before they have had so small a care of their Duty, and respect unto him, or their many Obligations, as to disturb his Service and necessary Affairs, and disparage his Servants, and do all they can to ruine and undo them by an Arrest or Imprisonment without licences.

When at the same time they would readily sub-scribe to the reasonableness of the Kings delivering and freeing from Arrest the Lord Mayor of London, & punishing those that should do it, If for permitting in the Strand or any other place out of his Liberty that the Cities Sword the Ensign or Mark of Honour given unto it within its proper Jurisdiction to be carri'd up, he should be Arrested, or if he or any of the L111 2 Sheriffs

Sheriffs or Aldermen should in their Passage to Whitehall to attend the King when he commanded them, be Arrested upon any other Action.

Will not a Tenant to a Lord of a Mannor who receives not so great a protection from him nor hath so great a need of him, as every Subject hath of the Kings Grace and Favour, be thought by all his Neighbours to be more than a little out of his Wits that should adventure his displeasure by Arresting the Steward of his Court, Valet de Chambre, Coachman, Butler, Brewer, Hors-keeper or any of his Servants without leave or licence, or denial of Justice upon his Complaint first had?

And will they not be deemed to be more Mad. that shall so far forget themselves and their duty to the King, as to Arrest without licence any of the Servants of their Soveraign, which is the only Rock of defence and Succour which they have to flee unto in all their distresses, or for Mercy, which is not feldome needed upon any Offences, or transgressions against him or his Laws. May not the King punish Contempts and breaches of Priviledges, as well as those that do subordinately A& by the Authority of Him and His Laws, or not cause as much to be done in Order to the profervation of their Authority and Jurisdictions, as they usually do unto any that should disturb the necessity and duty of their places: Or may not the King as supreme Magistrate, cause any that shall transgress the limits of their obedience in Arresting

his Servants without licence to be Arrested or Imprisoned, for such an affront or contempt of Majefty and the Supreme Power, when it hath been ordinarily done and justified by some Lords of Mannors and Liberties, in the Case of Sheriffs and Bailiffs, prefuming to Arrest any man within their Liberty without a Writ of non Omittas propter aliquam libertatem, or special Warrant where the Lord of the Mannor hath neglected to do it? Or must the King when any wrong or injury shall be done to his Servants, fuffer such contempt to be remedyless, and only say, why do you do so? who when he doth cause the undutifulness and unmannerliness of such Offenders to be punished by a few days gentle restraint, cannot with any truth or Reason be said to have given away their Debts, when at the most it is but a small delay, and doth many times occasion them to be sooner and less chargeably paid, than it would be with an Action or Suit, and the many Animolities, Vexations and Heats which do usually attend Actions or Suits at Law:

Did our MagnaCharta prohibit or give away any of the Liberties and Priviledges of the King and his Servants, which are necessary for the Support and just means of Government, and that high Authority with which God and the Law have intrusted him?

Can the King by his Writ cause a man or his Cattel or Goods to be Arrested and taken in Withernam until the person of a man or his Cattel or goods wrongfully Arrested, be delivered.

H. 3. 0 11 H. 4 15. Mich 8 H. 1, in Banco Rigis rot. 15.

Rot. clauf vered or freed from reftraint? (r) and shall it not be as lawfull for the King, by Arresting or Imprisoning the Party that did or procured it, to enforce the delivery of a Servant wrongfully or unduly Arrested without his leave or licence first obtained.

Cokes 4th part of the Institutes & M. S. penes virum Cl. Tohannem Berkenhead Equitem A Brat.

Is the Kings Service the only cause of the Priviledge of Parliament, so operative and powerfull in its effects, as a Member of the house of Commons newly elected, is so enrituled to his Priviledge, (1) as before his admission or Oath taken, the Infringers thereof have been severely punished, as it was upon great debate and Examination, adjudged in Parliament in the Case of William Fohnlon a Burgesse of Parliament, in the first year of the Reign of Queen Mary, and the like for Arrefting upon an Execution, Sir Richard Fitzberbert Knight a Member of Parliament in the 34th year of the Reign of Queen Elizabeth; and that kind of Priviledge so Watched and Guarded, and in allits parts and circumstances so taken care of and inviolably kept: As it may not be renounced or quitted by any one Member without a breach of Priviledge to all the rest; nor is any leave to be given upon Petition, or any the most urgent necessities of a Plaintiff or Creditor to moleft or Imprison any of them or their Servants during the Session of Parliament, and the time of Priviledge allowed them before and after them.

And cannot the people of England be well content

tent and think themselves to be in a better Condition, when in the Case of the Priviledge of the Kings Servants, they may in the time of Parliament or without, have licence upon a reasonable time prefixed for satisfaction, to take their course and pro-

ceed at Law against them.

Shall the Vallies rejoyce in their Springs and pleafant Fountains, and the Spring or Fountain it felf that distributeth those living and refreshing Waters have no part thereof? Hath the Chamberlain of the Lord Mayor or City of London, Power to commit a Freeman of that City to Ward; So that he do Immediately [end word to the Lord Mayor thereof. and the cause why he is so punished; (t) from which the t Stoms Sur-Lord Mayor may not release him but by the Chamber- vey of Lonlains affent. And shall it not be lawfull for the Lord don tit. anti-Chamberlain of the Kings most Honourable Houf- and Customs hold by and under the Kings Supreme Authority, of the City to Imprison or punish any who in Contempt of So- of London, veraignty and Majefty, shall without licence first procured, Arrest any of his Servants?

For certainly it is and should be the Interest of the people of England, not to deny so great a principle of Nature, and so clear a part of the Reason of all Mankind, or to give unto Cafar that which so justly belongeth unto him, by the Laws of God. Nature, Nations, Laws of England, Custom and prescription, Right of Superiority, Oaths of Allegiance and supremacy, Et quod ubique, quod semper, & ad omnibus, and which, every where, always, and of all men (except by our late rude and levelling: ling part of the people) have neither been repined at or maligned: And it will not be for the Interest of the people of England to oppose their Prejudices, Fancies, Humours and opiniastretes, to the Rights of the King and his Servants, but it is, and will be the Interest of the King to preserve the Rights of Majesty, Superiority and just means of Government, and to punish the violaters and Contemners thereof, and the Interest of all his good people to wish and desire it.

FINIS.

